TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 123.

A. B. BALLARD AND JOSEPHINE W. BALLARD, PLAINTIFFS IN ERROR,

vs.

CHARLES W. HUNTER, A. HACKLER, AND THE BOARD OF DIRECTORS OF THE ST. FRANCIS LEVEE DISTRICT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

FILED OCTOBER 3, 1905.

(19,917.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 19, 1906.

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a STATE OF ARKANSAS, *In the Supreme Court, set:*

Be it Remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 23rd day, being the fourth Monday of November A. D. 1903 at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 2nd day of May 1904, a day of said term: and on subsequent days.

A. B. BALLARD ET AL., Appellant-,
v.
C. W. HUNTER, Appellee.

Appeal from Crittenden Ch'y Court.

b *Writ of Error.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Arkansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said Supreme Court of the State of Arkansas, before you, or some of you, being the highest court of law or equity of said state in which a decision could be had in the said suit, between A. B. Ballard and Josephine W. Ballard, on one side, and Chas. W. Hunter, A. Hackler and the Board of Directors of the St. Francis Levee District, on the other, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the constitution, or a treaty, or a statute of, or commissions held under, the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error having happened, to the great damage of the said A. B. Ballard and Josephine W. Ballard, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in that behalf,

We command you, if the judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ,
c so that you have the same at Washington on the second Monday of October, 1905, in the said Supreme Court, to be then

and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to corect that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice, of the Supreme Court, the 4th day of August, 1905.

[Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District, Arkansas.]

EMERSON R. CRUM,
Clerk of the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

Allowed by
JOS. M. HILL,
Chief Justice of the Supreme Court of Arkansas.

Fee $1.00 paid Clerk by plaintiffs in error.
Filed Sept. 9th A. D. 1905.

P. D. ENGLISH, *Clk.*

STATE OF ARKANSAS, *ss:*

In pursuance of the command of the writ of error within, I, P. D. English, Clerk of the Supreme Court of the State of Arkansas, herewith transmit a true copy of the record and all the proceedings in this case of A. B. Ballard and Josephine W. Ballard *vs.* Chas. W. Hunter, A. Hackler, and the Board of Directors of the St. Francis Levee District, lately pending in the said Supreme Court, under my hand and the seal of the said Court.

Witness my official signature and the seal of the said Supreme Court at the City of Little Rock, in the State of Arkansas, this 9 day of Sept. 1905, and of the independence of the United States of America one hundred twenty-nine.

[Seal of the Supreme Court of Arkansas.]

P. D. ENGLISH,
Clerk of the Supreme Court of the State of Arkansas.

d THE UNITED STATES OF AMERICA:

To Chas. W. Hunter, A. Hackler, and the Board of Directors of the St. Francis Levee District, Greeting:

You are hereby cited and admonished to be and appear at a supreme court of the United States to be holden in the City of Washington on the second Monday of October next, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Arkansas, wherein A. B. Ballard and Josephine W. Ballard are plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned,

should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand this the 18 day of Aug. 1905.

JOS. M. HILL,
Chief Justice of the Supreme Court of Arkansas.

For the Board of Directors of the St. Francis Levee District, a defendant in error in the above citation, service of the citation is hereby acknowledged, this 28th day of August, 1905.

H. F. ROLESON,
Attorney for Board of Directors of the St. Francis Levee Dist.

Filed Sept. 9th A. D. 1905.

P. D. ENGLISH, *Clk.*

Came to hand August 23, 1905, and executed by delivering a true copy to Mrs. A. Hackler, and also reading her the above notice, in Crittenden County, Ark., on the 26" day of August, 1905. Also executed by reading the above notice to Messrs. Berry & Shafer, as attorneys for the defendants in Crittenden County, Ark., on the 25th day of August, 1905, and delivering them a true copy thereof.

Chas. W. Hunter, and the Board of Directors of the St. Francis Levee District, are not to be found in my county.

This August 31", 1905.

C. L. LEWIS,
Sheriff Crittenden County, Ark.

Fees for service, $4.50 Paid by plaintiffs in error.

Filed Sept. 9th A. D. 1905.

P. D. ENGLISH, *Clk.*

STATE OF TENNESSEE, *County of Shelby:*

I, Wm. H. Harrington, a duly appointed and acting Deputy Sheriff, in and for the said County, do state on oath that on the 23rd day of August, 1905, at 3:05 o'clock P. M. I delivered to Chas. W. Hunter, named in the fore-going citation, a true copy thereof, at Memphis, Shelby County, Tennessee.

Fee $1.00 paid by pl'ffs in error.

W. H. HARRINGTON, *D. S.*

Subscribed and sworn to before me Jos. M. Connable a Notary Public in and for the said County, this 4th day of September, 1905.

Witness my hand and seal of office as such Notary public at Memphis, this 4th day of Sept., 1905.

[Seal Jos. M. Connable, Notary Public, Shelby County, Tennessee.]

JOS. M. CONNABLE,
Notary Public.

My commission expires on the 9th day of October, 1905.

e Know all men by these presents, that we, A. B. Ballard and Josephine W. Ballard, as principals, and Wm. M. Randolph, as sureties, are held and firmly bound unto the defendants, Chas. W. Hunter, A. Hackler, and the Board of Directors of the St. Francis Levee District, in the full and just sum of Five hundred dollars ($500.00), to be paid to the said Chas. W. Hunter, A. Hackler, and the Board of Directors of the St. Francis Levee District, their certain attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 18th day of August, 1905.

Whereas, lately in the Supreme Court of the State of Arkansas, in a suit pending in the said Court between A. B. Ballard and Josephine W. Ballard on one side, as plaintiffs, and Chas. W. Hunter, A. Hackler, and the Board of Directors of the St. Francis Levee District as defendants, on the other a judgment was rendered against the said A. B. Ballard and Josephine W. Ballard, and the said A. B. Ballard and Josephine W. Ballard have obtained a writ of error and filed a copy thereof in the office of the Clerk of the said Supreme Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Chas. W. Hunter, A. Hackler, and the Board of Directors of the St. Francis Levee District, citing and admonishing them to be and appear at a session of the United States Supreme Court to be holden at the City of Washington on the second Monday of October, next, has been issued.

Now, the condition of the above obligation is such, that if the said A. B. Ballard and Josephine W. Ballard shall prosecute the said writ of error to effect and answer all damages and costs, if they fail to make the said plea good, then the above obliga-
f tion will be void, else to remain in full force and virtue.

A. B. BALLARD,
JOSEPHINE W. BALLARD,
By RANDOLPH & RANDOLPH, *Att'ys.*
WM. M. RANDOLPH, *Surety.*

Sealed and delivered in the presence of

—— ——.

Approved by
JOS. M. HILL,
Chief Justice of the Supreme Court of the State of Arkansas.

Filed Sept. 9th A. D. 1905.

P. D. ENGLISH, *Clerk.*

g In the Supreme Court of the United States.

A. B. BALLARD and JOSEPHINE W. BALLARD, Plaintiffs in Error,
vs.
CHAS. W. HUNTER, A. HACKLER, and THE BOARD OF DIRECTORS OF THE ST. FRANCIS LEVEE DISTRICT, Defendants in Error.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The plaintiffs in error, named above, present herewith the writ of error sued out in the above styled case, lately pending in the Supreme Court of the State of Arkansas, and the return thereto, made by the Clerk of the Supreme Court of the State of Arkansas, including an authenticated transcript of the record of the above suit, from the said Supreme Court, and a citation to the defendants in error, named above, duly served on them, and pray that the judgment of the said Court, in the said suit, may be reversed, on the grounds set out in the following assignment of errors, to-wit:

(1.)

The lands belonging to the plaintiffs in error were not properly described in the complaint, or sued for the taxes they were sold for, in the suit, and in not so decreeing the said Supreme Court erred. Thereby the plaintiffs in error have been deprived of their *h* lands without due process of law, and in violation of the Constitution of the United States.

(2.)

The two tracts of land belonging to the plaintiffs in error, the Southwest quarter of Section 32 and the South half of the Northwest quarter of Section 32, were sold along with and as part of the West half of Section 32, when the plaintiffs in error did not own or claim the North half of the Northwest quarter of that section. For that reason the sale of the lands of the plaintiffs in error was unlawfully decreed and unlawfully made. In not so decreeing, the said Supreme Court erred. Thereby the plaintiffs in error have been deprived of their lands without due process of law, and in violation of the Constitution of the United States.

(3.)

The said lands of the plaintiffs in error were sold as a whole under the description of the West half of Section 32, and for the taxes on the whole West half, when the plaintiffs in error were not chargeable with the taxes on the North half of the Northwest quarter of Section 32. For that reason the decree of sale and the sale of the lands of the plaintiffs in error were void. In not so decreeing, the said Supreme Court erred. Thereby the plaintiffs in error have been de-

prived of their lands without due process of law, and in violation of the Constitution of the United States.

i

(4.)

The lands of the plaintiffs in error were sold for sums not legally chargeable thereon, to-wit: (*a.*) For fees to the Commissioner for furnishing printer with list of lands to be advertised; (*b.*) To the Commissioner for attending and making and reporting the sale; and (*c.*) To the printer for publishing a notice of the sale of each tract of land. For the said reasons the decree of sale, and the sales of the lands of the plaintiffs in error, were void. In not so decreeing, the said Supreme Court erred. Thereby the plaintiffs in error have been deprived of their lands without due process of law, and in violation of the Constitution of the United States.

(5.)

The Acts of the General Assembly, of the State of Arkansas, that is, Act No. 19 of the Acts of the year 1893, and No. 71 of the Acts of the year 1895, require a notice to be given to the owners of the lands proceeded against, in the suit they provide for, and no such notice was given plaintiffs in error, of the suit, and the decree of sale, and the sales in this suit, of their lands, for the want of such notice were unauthorized and void. And the said Supreme Court should so have decreed, and erred in not doing so. Thereby the plaintiffs in error have been deprived of their lands without due process of law, and in violation of the Constitution of the United States.

(6.)

j The notice provided for in Act No. 71 of the Acts of the General Assembly of the year 1895, assuming that notice was given in the suit, in accordance with that Act, was insufficient, and conveyed no adequate information of the suit to the plaintiffs in error. It was not such a notice of the pendency of the suit, as was required by the said Act of the General Assembly, or by the general law, to be given to the owners of lands who were citizens of the State of Arkansas, or residents of Crittenden County, Arkansas, where the lands involved here are located, or to persons owning and occupying lands located there, similarly circumstanced, and subject to the same taxation, or persons owning and having tenants on such lands. All such persons were entitled, by the said Act of the General Assembly, to and had personal notice of the suit for at least twenty days before the rendition of the decree of sale. The plaintiffs in error, as citizens respectively of the States of Georgia and Florida, and as non-residents of Crittenden County, and residents respectively of the States of Georgia and Florida, were allowed and were given notice constructively, if any was given, only by publication in a newspaper, published in Crittenden County, and only weekly, for four weeks, the date of the first publication of the notice being, and being required to be, only four weeks before the

rendition of the decree of sale. The plaintiffs in error had no personal or other notice of the said suit, and never appeared therein. The decree of sale has been rendered and the sale made without notice to them. The plaintiffs in error have thus been denied the privileges and immunities of citizens of the United States, and also denied the privileges and immunities of citizens of Arkansas, and have been denied the equal protection of the laws within the State of Arkansas, and have been deprived of their property without due process of law. By reason of such insufficiency and inadequacy of the said notice, the decree of sale and the sales thereunder of the lands of the plaintiffs in error to the defendants in error, *k* Hunter and Hackler, respectively, are void, and such sales pass no titles to them. The said Supreme Court should so have decreed, and in not so decreeing, erred. Thereby the plaintiffs in error have been deprived of their lands without due process of law, and in violation of the Constitution of the United States.

(7.)

Under the Constitution and the laws of the United States, and particularly the Fourteenth Amendment, the plaintiffs in error, were entitled to all the privileges and immunities of citizens in the several States, and their privileges and immunities as citizens of the United States could not be abridged by any law of the State of Arkansas, nor could they be deprived of their property without due process of law, nor denied the equal protection of the laws within the State of Arkansas. The plaintiffs in error under the general laws of the State of Arkansas were entitled to reasonable personal notice of this suit and of its purpose and object, or to such constructive notice thereof as was in substance the equivalent under the circumstances, of such reasonable personal notice thereof, before any step could be taken or any decree pronounced therein, binding them or their lands. The decree of sale has been rendered and the lands of the plaintiffs in error have been sold thereunder, and bought by the defendants in error, Hunter and Hackler, respectively, without any notice of the suit having been given the plaintiffs in error, as required by the general laws of the State of Arkansas. Thereby the plaintiffs in error have been denied the benefit of such laws, and have been deprived of their property in the lands in controversy by the proceedings and decree in this suit, and the sales thereunder, without *l* notice to them, and without due proces of law and in violation of the Constitution of the United States, and the said Supreme Court should so have decreed, and in not so decreeing, erred.

(8.)

The sales of the lands of the plaintiffs in error, as shown by the record of this suit, are void, and pass no title, because in such suits the laws of the State of Arkansas applicable, have been disregarded and violated, to-wit: (*a.*) There were no sufficient allegations of a cause of action in the complaint in this suit, as against the plaintiffs in error, or their lands; (*b.*) There was no sufficient affidavit made

and filed to support a warning order or order for notice to the plaintiffs in error; (*c.*) There was no sufficient proof of the publication of any warning order, or any notice to the plaintiffs in error, filed or produced in Court when the decree of sale of their lands was rendered; and (*d.*) The decree of sale does not state, and the record does not show, the facts essential to the validity of the decree of sale, as against the plaintiffs in error, or their lands. Thereby the plaintiffs in error, in violation of the Constitution of the United States, have been denied the benefit of such laws in this suit. The said Supreme Court should so have decreed, and in not doing so, erred. And the plaintiffs in error have been deprived of their property without due process of law.

(9.)

The decree of the 14th of February, 1898, under which the lands of the plaintiffs in error were sold to the defendants
m in error, as shown in the record, was rendered in violation of the laws of the State of Arkansas, requiring proof of evidence to support the allegations of the complaint, as against the plaintiffs in error and the lands, as persons before the Court only by the constructive service of process. Such decree was pronounced as based on an alleged order or decree *pro confesso,* entered in the suit, not authorized by law, and so was rendered without due process of law, and in violation of the Constitution of the United States. The said Supreme Court should so have decreed, and in not doing so erred. Thereby the plaintiffs in error have been deprived of their property without due proces of law.

August 25th 1905.

WM. M. RANDOLPH,
GEORGE RANDOLPH,
WASSELL RANDOLPH,
Attorneys for Plaintiffs in Error.

Filed Sept. 9th 1905.

P. D. ENGLISH, *Clerk.*

n [Endorsed:] No. — A. B. Ballard, *et al. vs.* Chas. W. Hunter, *et al.* Assignment of Errors. Writ of Error to the Supreme Court of Arkansas. Filed Sept. 9th 1905 P. D. English Clerk Randolph & Randolph.

1 *Opening Order.*

STATE OF ARKANSAS, *County of Crittenden:*

Pleas before Hon. E. D. Robertson, Chancellor, presiding in the Chancery Court of Crittenden County, at the February term 1902, in the case wherein the Board of Directors of the St. Francis Levee District, is plaintiff, *vs.* The Memphis Land & Timber Co. and others defendants; and on the motion, answer, claim and petition of A. B. Ballard and Josephine P. Ballard, *vs.* Chas. W. Hunter and others,

in the said cause, when and where the following proceedings were had, to wit:

2 *Complaint.*

Complaint in Equity.

STATE OF ARKANSAS, *County of Crittenden:*

In the Chancery Court of Said County.

BOARD OF DIRECTORS OF THE ST. FRANCIS LEVEE DISTRICT, Plaintiff,

vs.

THE MEMPHIS LAND AND TIMBER COMPANY, JOHN ADAMS, B. L. Armstrong, Arkansas Land Company, S. A. Adams, John Armistead, S. Lundee, A. Alfrey, C. L. Allen, C. Barnette, Mrs. M. Buck, Alice Guerrant, Lem Banks, R. C. Brinkley, E. B. Currier, A. B. Ballard, Unknown Heirs of P. C. Bethel, Deceased; Mrs. A. B. Stull, Geo. W. Beeler, J. E. Botts, Unknown Heirs of P. G. Reeves, Unknown Heirs of W. D. Bethell, Deceased; W. N. Brown, A. V. Broadway, A. Boylen, R. W. Barton, G. H. White, A. H. Chatfield, Trustee; Mrs. J. A. Cartwright, S. Lentz, Albert Caldwell, Bolton Smith, Mary E. Conn, Unknown Heirs of Jno. R. Chase, Mrs. N. Calhoun, R. F. Crittenden, S. L. Cass, Minnie C. Robertson, J. T. Haden, S. J. Knott, M. A. Williams, Robert Clack, Aleck Cross, W. R. Cline, A. Cordes, Julia W. Collins, T. C. Crow, Henrietta D. Chambers, —— Kellar, Robert Cochran, S. R. Clark, C. B. Clark, Jr., W. C. Campbell, B. D. Cranch, S. Cunningham, N. B. Day, Owen Deveny, John Evans, John Ebert, L. Bicken, W. N. Brown, Jr., J. F. Rhodes, John Deihl, Ruth Earl, J. M. Williams, Trustee; W. H. Echols, Unknown Heirs of —— Edmonson, W. H. Elliott, Edwards Lumber Co., Margaret Fritz, L. S. Fritz, A. J. Foster, Louis Fritz, Unknown Heirs of H. Fitzgerald, Mrs. R. C. Fawcett, Sallie C. Browder, M. Gavin, J. M. Goodbar, Jessie Moon, Q. Gilman, Mrs. L. C. Thompson, T. M. Galbreath, P. Galbreath, Moses Hardin, Heirs — J. P. Hackler, N. Hill, N. Fontain, R. Hathaway, S. R. Hamblin, Unknown Heirs of J. C. Hall, J. H. Hardin, Wm. Hawley Ruby Maury, and O. M. Tufts, C. W. Hunter, A. B. Halbert, F. G. Harrison, Mrs. M. C. Hemingway, Allen Johnson, A. Boice, A. J. Johnson, John Johnson, A. H. Johnson, J. F. Jones, Alice Measles, C. A. Jenkins, Mina Jackson, E. T. Jackson, Heirs of Charlie Jones, Nina
3 Kelley, P. J. Kelley, Mrs. C. M. Keller, J. W. Kenton, James and Floy Keel, T. M. Klyce, Mary A. Lett, Mrs. Moses, C. L. Lewis, Ruth John, S. Long, W. B. Lockey, J. W. Loyd, J. N. Lee, E. Lowenstein, Little Rock & Memphis R. R. Co., Mrs. A. Morrison, Minor Meriwether, W. B. Morning, Mrs. S. A. Gilmore, D. E. Myers, W. M. Sneed, N. Hill, The Memphis Land & Timber Co., J. M. Meriwether, Mary Milburn, Mrs. L. B. Motley, Henry Morris, Woods Mahaffey, Frank Mahaffey, Walter

Mahaffey, Louis Meriwether, Julie Miller, L. D. Mullins, R. B. Safford, H. K. Morris, S. Morris, B. F. Moore, C. W. Martin, Thos. Malone, Unknown Heirs of Wm. Mitchell, Mrs. M. A. Morris, J. L. Sallie, and Elsie Malone. Mrs. M. Madden, G. E. McTigh, M. B. McKee, James McConnell, E. E. McGavock, G. I. Neptune, C. H. Orgain, A. Pierson, Jesse Peters, T. H. Persons, R. J. Person, Mrs. M. A. Quinn, Wm. Riley, James Riley, B. F. Rush, Unknown Heirs of J. R. Roman (?), M. P. Ramley, F. Reeves, Mrs. G. M. Connell, Rob't Rix, R. E. Richards, Hugh Shoemake, W. Stevenson, G. T. Stull, Dolph Smith, W. W. Swepston, Mrs. E. D. Davis, C. A. Smith, L. Swope, Sallie Taylor, Wm. Ticer, W. J. Taylor, Geo. Taylor, Ezekiel Thompson, R. G. Tucker, Agnes Toof, John Thompson, Unknown Owners, Unknown Heirs of G. H. Van Etten, J. P. Wheeler, T. H. Webb, Elizabeth Wilson, J. P. Walker, Mrs. F. H. Washburn, John Whitney, J. H. Williams, Wallace Williams, Geo. W. Wynne, Unknown Heirs of Joe Williams, F. P. Walker, Mrs. F. P. West, G. W. Waterford, M. B. Winchester, James Bassett, Annie Booker, Susan M. Chase, W. T. Crawford, R. F. Crittenden, Mrs. E. Davis, Pitsey Daniels, A. S. Grigsby, Jr., Wilson Harris, Allen Love, C. L. Lewis, A. W. Mathews, Joseph P. Marley, J. W. Reed, Mrs. Ada Williams, Wm. Wendell, R. Bankhead, A. T. Blankton, Jeff Black, P. Baksquard, H. N. Drinkwater, D. W. Dalton, C. F. Flanigan, A. Furbre, Wilson Groves, M. Henshaw, Mrs. Harris, C. T. Erby, F. W. King, Wm. Magher, A. V. Moore, Jas. McNamee, A. Vance, Hope Vance, C. Wessendorf, R. E. Winchester, W. H. Beattie, Jennie Davis, and George Morris, Defendants.

4 The plaintiff states that the following named defendants are non-residents of Crittenden County Arkansas, to wit: Arkansas Land Co., John Armistead, S. Lundee, A. Alfrey, Mrs. B. Buck, Alice Guarrant, Lem Banks, R. C. Brinkley, E. B. Currier, A. B. Ballard, Unknown heirs of P. C. Bethel, deceased, J. E. Botts, Unknown heirs of W. D. Bethel, dead, W. N. Brown, A. C. Broadway, G. H. White, A. H. Chatfield Trustee, Mrs. J. A. Cartwright, S. Lentz, Albert Caldwell, Bolton Smith, Unknown heirs of Jno. R. Chase, S. L. Cass, Minnie C. Robertson, Aleck Cross, A. Cordes, S. R. Clark, C. B. Clark, Jr., W. C. Campbell, B. D. Cranch, S. Cunningham, Owen Deveny, John Ebert, John Deihl, Ruth Earl, J. W. Williams Trustee, W. H. Echols, Unknown Heirs of —— Edmonson, W. H. Elliott, Edwards Lumber Co., Margaret Fritz, L. S. Fritz, Lewis Fritz, Unknown heirs of H. Fitzgerald, Mrs. R. C. Fawcett, M. Gavin, J. M. Goodbar, Jessie Moore, M. Galbreath, P. Galbreath, N. Hill, N. Fontaine, Unknown heirs of J. C. Hall, Ruby Maury and O. M. Tufts, C. W. Hunter, A. Halbert, Mrs. M. C. Hemingway, Allen Johnson, A. Brice, A. J. Johnson, John Johnson, Alice Measles, C. A. Jenkins, P. J. Kelley, Mrs. M. C. Keller, J. W. Kenton, James and Floy Keel, T. M. Klice, Mary A. Lett, Mrs. Moses, C. L. Lewis, Ruth Earl, W. B. Lockey, J. N. Lee, E. Lowenstein, Mrs. A. Morrison, Minor Meriwether, D. E. Myers, W. M. Sneed, N. Hill, The Memphis Land & Timber Co., J. Meriwether, Mary Milburn, Mrs. L. B. Motley, Woods Mahaffey, Walter Mahaffey, Frank

Mahaffey, Unknown heirs of Wm. Mitchell, Mrs. M. Madden, G. E. McTigh, M. B. McKee, E. E. McGavock, G. I. Neptune, C. H. Orgain, A. Pierson, Jesse Peters, T. H. Persons, R. J. Person, Mrs. M. A. Quinn, Wm. Riley, James Riley, Unknown heirs of J. W. Roman, M. P. Remley, Hugh Shoemake, W. Stevenson, C. A. Smith, R. G. Tucker, Agnes Toof, Unknown owners, Unknown heirs of G. H. Van Etten, Unknown heirs of Joe Williams, Mrs. Ada Williams, R. Bankhead, A. T. Blanton, Jas. McNamee, C. Wessendorf, W. H. Beattie.

5 The plaintiff, the St. Francis Levee District, states and represents to the Court that under and by virtue of the act of the General Assembly of the State of Arkansas, entitled "An act to lay off and establish "that part of the St. Francis basin lying within the States of Arkansas, into a levee district," and for protecting and maintaining the same and to incorporate a Board of Levee Directors "for said district, and for other purposes," which said act became a law without the approval of the Governor of said State of Arkansas on the 15th day of February, 1903, and the act amendatory thereof, which was approved on the 21st day of March, 1903, the following lands lying and being situated in said levee district, said county and State, and belonging to said defendants, named in the caption of this complaint, a list of which is hereto attached and asked to be taken as a part hereof:

List Land.

Township 3 North, Range 7 East.

Southeast quarter section 4, Township 3 North, Range 7 East, 160 Acres, Assessed to T. H. Allen, G. E. Seek and Louis Fritz—Taxes for year 1895, $6.40.

The East Half of South East Quarter Section 4, T. 3 R. 7 E. 80 Acres, assessed to Margaret Fritz—Taxes for 1897, $3.20.

The West half of Section 4, T. 3 N. R. 7 E. 160 Acres, assessed to J. Johnson—Taxes for 1897, $6.40.

The West half of Section 4, T. 3 N. R. 7 E. 320 Acres, assessed to J. Johnson—Taxes for 1897, $12.80.

The South East quarter of Section 3, T. 3 N. R. 7 E. 160 acres, assessed to David Fritz—Taxes for 1896, $6.40.

The East half, and the Northwest quarter of the northeast quarter of Section 3, T. N. R. 7 E. 120 Acres, assessed to Allen Johnson and A. Boyce—Taxes for 1896, $4.80.

The West half of the South West quarter of Section 3, T. 3 N. R. 7 E. 80 acres, assessed to J. Johnson—Taxes for 1897, $3.20.

6 Southeast quarter Section, 9, T. 3 N. R. 7 E. 160 acres, assessed to T. H. Allen, G. E. Seek and Louis Fritz—Taxes for 1897, $6.40.

South East quarter of North West quarter, Section 9, T. 3 N. R. 7 E. 40 acres, assessed to T. H. Allen, G. E. Seek and Louis Fritz—Taxes for 1897, $1.60.

All of section 9, T. 3 N. R. 7 E. 640 acres, assessed to J. Johnson—Taxes for 1897. $25.60.

Township 4 North, Range 7 East.

West half South East quarter Section 32, T. 4 N. R. 7 E. 480 acres, assessed to A. B. Ballard—
Taxes for 1895, $19.20
" " 1896, 19.20
" " 1897, 19.20

West half North East quarter, Section 32, T. 4 N. R. 7 E. 80 acres, assessed to A. B. Ballard—
Taxes for 1895, $3.20
" " 1896, 3.20
" " 1897, 3.20

North East quarter Section 31, T. 4. N. R. 7 E. 160 acres, assessed to A. B. Ballard—Taxes for 1895, $6.40.
" " 1896, 6.40.

were duly assessed for taxation for levee purposes in the name of the said defendants, whose names are written opposite to the said tracts of land respectively, as provided by said acts of the General Assembly hereinbefore referred to, and the taxes thereon being duly extended on the tax books of said Levee District, were duly returned by said collector and now remain on said tax books as delinquent, the taxes on said several tracts of land being as stated in the list herein before referred to as part hereof. That in accordance with the provisions of said acts, the Board of Levee Directors of said District called a meeting of the land owners in each of the respective counties within said Levee District in each county by posting notices
7 of the time and place of said several meetings in ten conspicuous places in each of said counties ten days before the day fixed for said meetings, at which meeting the proposition to levee an annual assessment for the year 1893 and subsequent years was submitted to said land owners, and at which meetings and on the day and at the places as fixed by said notices, a majority of all the land owners of said Levee District appeared in person or by their legal proxies, and at such meetings two thirds of all the land owners present as aforesaid voted in favor of the assessment as aforesaid, which proposed assessment for said year 1893 and subsequent years was two per cent. of the betterment or increased value, accruing to said lands for said years in said Levee District, by reason of said levee.

That in pursuance of the meeting aforesaid (said meetings conforming to and in all respects being held and conducted in accordance with the terms and requirements of said acts), the returns thereof were duly canvassed and the result declared as said statute directs. That proper notice of the result of such meetings was given in the manner and form as laid down by said acts, and the required proportion of the land owners of said district having met in pursuance of the notice required and given as aforesaid in conformity to said statutes, voted for said taxation, and the assessment and levy thereof were duly made by said Board of Directors.

That all the lands in said district were duly assessed for taxation, as per the said increased value, or betterment, thereof, by the assessors elected under said acts and in accordance with the terms and

requirements thereof; and the benefits, or increased value, as aforesaid of the lands herein described and referred to as belonging to the said defendants were assessed at the value of Two Dollars ($2.00) for each and every acre thereof for said year 1894 and the said lands were likewise assessed for, at the same rate for 1894, 1895, 1896 and
1897 said lands being and constituting a part of the area and
8 territory of said Levee District.

That in pursuance to the statute aforesaid, the said Board of Levee Directors elected one collector of taxes for each county in said Levee District, the person so elected for said county of Crittenden being the said Dr. R. W. Barton. That said Dr. R. W. Barton as collector aforesaid, on the first Monday in October 1894, 1895, 1896 and 1897 proceeded to collect said taxes due on the lands of said Crittenden County, and on the first Monday of October 1894, said Dr. R. W. Barton as collector proceeded to collect said taxes due on said lands for 1894, within said levee district, and that within the time limited by said statutes for the collection of said taxes no taxes were paid by said defendants nor by any one for them on their lands as aforesaid, and all of said taxes on said lands of said defendants, hereinbefore named in the caption to this complaint, are yet wholly unpaid and are delinquent, as shown by the certificate of the Secretary of said Board of Directors, which is subjoined to the list of said defendant lands, which list is hereto attached as a part of this complaint, marked "Delinquent lands of St. Francis Levee District of Crittenden County Arkansas," and as shown by said tax books themselves.

Plaintiff further states that by the terms and provisions of said acts of the General Assembly, plaintiff has a lien on said lands of said defendants for said unpaid taxes, together with interest thereon at the rate of six per cent. per annum from the first Monday in November, on 60¢ from first Monday in November 1894, 1895, 1896, and 1897 until paid, and the penalty of twenty five (25) per cent. as provided and imposed by said statutes for nonpayment of said taxes, which said taxes, without interest or penalty, amount to the aggregate sum of —— Dollars.

Wherefore, the premises considered, the plaintiff prays judgment to be given plaintiff against said defendants for said aggregate amount
of taxes, interest, penalty, and the costs of this proceeding,
9 and that such judgment be decreed to be a first lien on said
lands of said defendants above named and that for the pur pose of enforcing said decree, said lands to be condemmed and that they be sold by a commissioner of the court, to be appointed for the purpose under said acts of the General Assembly; and for all other relief that to the Court may appear just and equitable, as well as proper in the enforcement of said statutes.

That a warning order issue for the non-resident defendants herein named requiring them to answer the complaint of the plaintiff at the next January term of this Court, and that summons issue as to the other named defendants.

——— ———,
Solicitor for Plaintiff.

10 STATE OF ARKANSAS, *County of Crittenden:*

R. J. Williams states that he is the attorney for the plaintiff and that the chief officers of the St. Francis Levee District are absent from Crittenden County, and that the facts stated in the foregoing complaint are true.

(Signed) R. J. WILLIAMS,
Att'y for Pl'ff.

Subscribed and sworn to before me this the 21st. day of December, 1897.

(Signed) J. T. HADEN, *Clerk,*
Br R. F. WARD, *D. C.*

11 Endorsement & File Mark: #589. Board of Directors of the St. Francis Levee District *vs.* The Memphis Land & Timber Co. and others. Complaint. Filed this 21st. day of December, 1897. J. T. Haden, Clerk, By R. F. Ward, D. C. R. J. Williams, Sol. for Plaintiff. Answer of Memphis Land and Timber Company and others.

12 *Decree.*

FEBRUARY 14, 1898.

THE BOARD OF DIRECTORS OF THE ST. FRANCIS LEVEE DISTRICT, Pl'ff,
vs.
THE MEMPHIS LAND & TIMBER CO. ET AL., D'f'ts.

Decree.

Now on this day this cause coming on to be heard comes the Plaintiff, the Board of Directors of the St. Francis Levee District by R. J. Williams its attorney and the defendants B. L. Armstrong, C. Barnett, Mrs. A. B. Steel, Geo. W. Beel-r, A. Boylan, B. W. Barton, R. F. Crittenden, J. T. Haden, S. J. Knott, M. A. Williams, Robert Clack, W. B. Cline, Henrietta D. Chambers, Robert Cochran, L. Pickett, W. N. Brown, J. F. Rhodes, Sallie C. Browder, Q. Gilmore, Mrs. L. C. Thompson, J. P. Hackler, R. Hathaway, S. R. Hamlin, J. F. Hardin, W. B. Hawley, Ruby Tufts, Maney Tufts, O. W. Tufts, F. G. Harrison, James Keel, Floy Keel, J. T. Smith, C. L. Lewis, Ruth Earl, J. W. Floyd, W. B. Mooring, Mrs. S. A. Gilmore, E. Lewis Meriwether, H. K. Morris, S. Morris, Thomas Malon, Mrs. M. A. Morris, J. L. Malone, Jas. McConnell, B. F. Reese, G. McConnell, R. E. Richards, G. T. Stull, W. W. Swepston, Dolph Smith, Mrs. E. D. Davis, L. Swoope, William Ticer, Geo. Taylor, Ezekiel Thompson, T. H. Webb, Elizabeth Wilson, Mrs. F. H. Washburn, John Whitney, J. H. Williams, Geo. W. Wynne, G. W. Waterford, M. B. Winchester, Jas. Bassett, Susan M. Chase, Mrs. E. Davis, Wilson Harris, Allen Lane, William Wendell, P. Bansguard, H. N. Drinkwater, Mrs. Harris, Wil-

liam Margher, A. V. Moore, A. Vance, Hope Vance, R. E. Winchester, Jennie Davis, Mrs. Emma Mattox, who were duly served with summons in this cause as shown by the return of the sheriff filed herein came not but made default and the defendants the Me. his National Bank, C. W. Frazer Trustee, A. B. Hulbert, C. H. Orgain, Unknown heirs of Eli Rainer, Mrs. M. A. Madden, Wm. Randolf, C. B. Bryan, C. W. Hunter, G. E. McTighee, M. B. McKee, James Riley, Hugh Shoemake, Unknown heirs of G. C. Brown, M. Buck, Alice Guerrant, Ed. Bass, L. Luntz, John F. Rhodes, J. M. Capps, W. Z. White, G. H. White, J. A. Cartwright, S. Luntz, John Ebert, W. W. Swepston, G. A. Webber, A. Calhoun, John Armistead, S. Lundee, Mrs. L. S. Cass, M. C. Robinson, J. T. Haden, S. M. Buck, Unknown heirs of B. C. Crump, Unknown heirs of H. A. Dickens, C. A. Jenkins, J. S. & W. P. Lemaster, Minor Meriwether, R. G. Tucker, J. B. Cartwright, Unknown heirs of Wilhelminer Chaplin, Unknown heirs of Mrs. Chapman, Wm. Hawley, Ruby Merry, O. M. Tufts, Joseph & Floy Keel, J. F. Smith Guardian, Unknown heirs of J. D. Ware, M. A. Quinn, T. N. Cline, Mary A. Lett, Mrs. Moses, B. D. Couch, Owen Deveny, R. Hathway, Sallie & Elsie Malone, J. M. Goodbar, Mrs. A. Morrison, Bettie Shultz, A. E. Van Etten, John Adams, Lem Banks, W. N. Burns, J. M. Williams, Woods, Frank & Walter Mahaffey, W. B. Lockey, J. H. Van Etten, A. B. Webb, J. W. Stewart, Unknown heirs of Joe William, W. H. Elliot, G. H. Van Etten, M. A. Fisher, Mrs. R. C. Fawcett, Hewett & Montodonico, T. R. Huxtable, S. R. Clark, C. B. Clark, John McGrath, E. E. McGavock, Mrs. M. A. Quinn, Unknown heirs of Wm. Mitchell, A. Campbell, Margaret Fritz, David Fritz, Allen Johnston, A. Boyce, J. Johnson, D. E. Myer, Wm. Sneed, N. Hill, R. & S. Weiser, A. Pierson, Arkansas Land Co., R. B. Snowden, H. L. Brinkley, W. J. & R. C. Brinkley, E. B. Currier, Unknown heirs of Lucile Brinkley dec., A. B. Ballard, D. H. Rhodes, A. H. Johnson, Memphis Land & Timber Co. Jessie Peters, A. Bertionelli, J. E. Gunter, N. Stephenson,
13 T. H. Allen, G. E. Seek, Lewis Fritz, L. S. Fritz, Mary Milburn, M. P. Remley, W. Stephenson, J. M. Meriwether, Unknown heirs of P. G. Reeves, J. E. Botts, Rich. Earl, John Daihl, J. M. Williams, A. Cordes & Co., R. B. Earl, L. Picken, W. M. Brown, J. A. Rhodes, Gilmer Manchester, Jas. Meriwether, Mary F. Raines, R. J. Peerson, J. H. Meriwether, S. L. Conklin, M. Gavin, Wm. Riley, S. A. Adams, Unknown heirs of P. C. Bethell, Mrs. Jessie Moore, Unknown heirs of H. Fitzgerald, H. C. Moore, J. J. Jones, Alice Measler, Mrs. L. B. Motley, E. M. Avery, R. C. Shoemaker, Unknown heirs of W. Bethell, W. N. Brown, A. C. Broadway, T. C. Cran, H. D. Chambers, Sarah Floyd, J. W. Kenton, M. C. Keller, E. Lowenstein, J. N. Lee, Giles Meriwether, G. I. Neptune, T. H. Persons, W. C. Campbell, J. R. Greene, Unknown heirs of J. W. Roman, Albert Caldwell, Bolton Smith, W. H. Echols, Alexander Cross, C. A. Smith, Agnes Toof, F. G. Barton, A. Alfrey, W. D. Bethel, R. Galloway, Unknown heirs of C. C. Copenhaver, Edwards Lumber Co., N. Gould, C. W. Hunter, John Thompson, Mrs. S. Cunningham, Mrs. M. C. Hemingway, J. H.

McDavit, A. H. Chatfield Trustee and owners of lands who are unknown were severally constructively summoned by publication in a newspaper published in Crittenden County Arkansas weekly for four weeks before this day, proof of which has been previously filed herein and all of the above named defendants except A. H. Chatfield, The Memphis Land & Timber Co., and the Arkansas Land Co. having failed to plead answer or demur to the complaint of the plaintiff the Court on motion of the attorney for the plaintiff awards a decree *pro confesso* as to them in favor of the plaintiff for the amount of the taxes interest penalty and costs due for their said lands; thereupon this cause was submitted to the Court on the complaint of the plaintiff and the answer of the said A. H. Chatfield Trustee, The Memphis Land & Timber Co., and the Arkansas Land Co. and the documentary evidence the records of the Board of Directors of the St. Francis Levee District the records of the Board of Assessors of the said levee district the assessment books and the tax books for said levee district for Crittenden County the exhibits to the complaint and the oral evidence of Hugh R. McVeigh, secretary of the board of directors of said district, W. H. Newsome, Dr. R. W. Barton collector for Crittenden County and Arthur Vance assessor of said county for said levee district.

And upon consideration thereof the Court doth find that said board of directors of the St. Francis Levee District is a body politic duly organized under the laws of the State of Arkansas with power to sue and be sued, and it further appearing that the list of lands hereinafter described lie and are situated in said St. Francis Levee District in Crittenden County, Arkansas, and were duly assessed for taxation for levee purposes in the names of the said defendants whose names are written opposite each separate tract and that the taxes thereon were duly extended on the tax books of said levee district for said County and were duly returned by the collector of taxes for said levee district in said county and now remain on said tax books as delinquent, and the Court doth further find that in accordance with the provisions of an act of the General Assembly of the State of Arkansas entitled an act to lay off and establish that part of the St. Francis basin lying within the State of Arkansas into a levee district and for protecting and maintaining the same and to incorporate a board of levee directors for said district and for other purposes which became a law of the 15th. day of February 1893 and the act amendatory thereof which was approved on April 2, 1895, the Board of Levee Directors of said district called a meeting of the land owners in each of the respective counties within said levee district in each county by posting notices of the times
14 and places of said several meetings in ten conspicuous places in each of said counties ten days before the day fixed for said meetings, at which meetings the proposition to levy an annual assessment was submitted to said land owners and at which meeting and on the day and at the places as fixed by said notices a majority of all the land owners in said levee district appeared in person or by their legal proxies and at such meeting two thirds of all the land owners present voted in favor of the assessment as aforesaid, which

proposed assessment was two per cent. of the betterment or increased value accruing to said lands in said levee district by reason of said levee, that in pursuance of the meetings aforesaid said meetings conforming to and in all respects being held and conducted in accordance with the terms and requirements of said Act, the returns thereof were duly canvassed and the result declared as statute directs, the proper notice of the result of such meetings was given in the manner and form as laid down by said act and the required proportion of the land owners of said district having met in pursuance of the required *and* given as aforesaid in conformity to said statute, voted for said taxation and the assessment and levy thereof were duly made by the said Board of Directors, that all of the lands in said district in Crittenden County were duly assessed for taxation as per said increased value or betterment thereof by the assessor elected under said act for said county and in accordance with the terms and requirements thereof; and the benefit or increased value as aforesaid of the lands hereinafter described as belonging to said defendants whose names are written opposite each tract were assessed at the value of ($2.00) two dollars for each and every acre thereof for the years 1893, 1894, 1895, 1896, 1897, and the tax voted by the land owners of said district as aforesaid was likewise levied on said lands by the Board of Directors for the said years 1893, 1894, 1895, 1896, 1897; that in pursuance of the statutes aforesaid, the said Board of Directors of the St. Francis Levee District elected one collector of taxes for each county in said levee district the person so elected for Crittenden County for the years 1893, 1894, 1895, 1896 and 1897 being Dr. R. W. Barton, that the said Dr. R. W. Barton as collector as aforesaid on the first Monday in October of the said years 1893, 1894, 1895, 1896, and 1897 respectively proceed- to collect said taxes due on said lands in Crittenden County in said levee district for said years 1893, 1894, 1895, 1896 and 1897, and that within the time limited by said statutes for the collection of said taxes no taxes were paid by said defendants or any one for them on said lands and all of said taxes on said lands of said defendants are yet wholly unpaid and are delinquent; and the Court doth further find that the plaintiff has a lien on the said lands of said defendants for said unpaid taxes for the said years 1893, 1894, 1895, 1896 and 1897 together with interest thereon at the rate of six per cent. per annum from the first Monday of November of the years in and for which said — are delinquent respectively until paid and a penalty of twenty five per cent. of the said taxes for each year for which said lands are delinquent, as provided by said statute for the nonpayment of said taxes.

It is therefore considered ordered and adjudged and decreed by the court that the plaintiff the Board of Directors of the St. Francis Levee District do have and recover of and from the defendants severally to be enforced wholly against said lands, the amount of the taxes, interest penalty and costs assessed levied and extended against the lands belonging to each of said defendants respectively for the years 1893, 1894, 1895, 1896 and 1897 according to the following list and tabulated statement, to wit:

15 Township 3 North, Range 7 East.

South east quarter Section 4, Township 3 North Range 7 East, 160 acres, assessed to T. H. Allen, G. E. Seek and Louis Fritz—Taxes for year 1895, $6.40.

The East half of Southeast quarter Section 4, T. 3 N. R. 7 E. 80 acres, assessed to Margaret Fritz—Taxes for year 1897, $3.20.

The West half of East half of Section 4, T. 3 N. R. 7 E. 160 acres, assessed to J. Johnson—Taxes for 1897, $6.40.

The West half of Section 4, T. 3 N. R. 7 E. 320 acres, assessed to J. Johnson—Taxes for 1897, $12.80.

The Southeast quarter of Section 3, T. 3 N. R. 7 E. 160 acres assessed to David Fritz—Taxes for 1896, $6.40.

The East half, and the Northwest quarter of the Northeast quarter of Section 3, T. 3 N. R. 7 E. 120 acres, assessed to Allen Johnson and A. Boyce—Taxes for 1896, $4.80.

The West half of the Southwest quarter of Section 3 T. 3 N. R. 7 E. 80 acres, assessed to J. Johnson—Taxes for 1897, $3.20.

South East quarter section 9, T. 3 N. R. 7 E. 160 acres, assessed to T. H. Allen, G. E. Seek and Louis Fritz—Taxes for 1897, $6.40.

South East quarter of North West quarter, Section 9, T. 3. N. R. 7 E. 40 acres, assessed to T. H. Allen, G. E. Seek, and Louis Fritz—Taxes for 1897, $1.60.

All of Section 9, T. 3 N. R. 7 E. 640 acres, assessed to J. Johnson—taxes for 1897, $25.60.

Township 4 North, Range 7 East.

West half of South East quarter Section 32, T. 4 N. R. 7 E. 480 acres, assessed to A. B. Ballard—

Taxes for 1895, $19.20.
" " 1896, 19.20.
" " 1897, 19.20.

West half of North East quarter, Section 32, T. 4 N. R. 7 E. 80 acres assessed to A. B. Ballard—

Taxes for 1895, $3.20.
" " 1896, 3.20.
" " 1897, 3.20.

North East quarter section 31 T. 4 N. R. 7 E. 160 acres, assessed to A. B. Ballard—

Taxes for 1895, $6.40.
" " 1896, 6.40.

It is further adjudged and decreed that the total amount set opposite each several tract in the foregoing list of lands is the amount of the taxes, interest penalty and costs due thereon to the plaintiff and that the same be and is hereby decreed to be a lien on each of said tracts respectively and it is further ordered adjudged and decreed that any of said defendants or any person for him or them or any person claiming any of said lands or any interest

therein may before sale pay to the clerk of this court the amount of the taxes interest penalty and costs set opposite each several tract in the foregoing statement and the costs hereinafter provided for that may have accrued at the time of payment and said clerk shall give him a receipt therefor and note the fact of payment and by whom made on the margin of this decree and such payment shall be a discharge of this decree as against the tract so paid on and it is further ordered adjudged and decreed that the clerk of this court be and he is hereby appointed commissioner of this court and is hereby directed to sell the lands hereinbefore described on which the lien has not yet been discharged as above provided at the front door of the court house of Crittenden County at public outcry to the highest bidder for cash in hand, after first having advertised said lands for sale by publication of a notice of said sale weekly for two weeks consecutively in some newspaper published in said county if there be one, and if no such paper is published in said county then he shall advertise such sale as above set forth in some newspaper published in an adjoining county
16 and if all the lands be not sold on the day as advertised such sale shall continue from day to day till completed, and it is further ordered adjudged and decreed that said commissioner shall execute a deed of conveyance to the purchaser of the land so sold and may include all the lands so sold to one purchaser in one deed, for which he shall receive a fee of one dollar to be paid by the purchaser.

It is further ordered adjudged and decreed that if the sum of the tax due together with the interest penalty and costs on any tract of land herein ordered to be sold is not bid for the same the said commissioner shall bid the same off in the name of the Board of Directors of the St. Francis Levee District, bidding therefor the whole amount due as aforesaid and shall execute a deed of conveyance therefor to said Board of Directors of said St. Francis Levee District.

It is further ordered adjudged and decreed that there shall be allowed to said commissioner fees as follows, for furnishing printer with list of lands to be advertised five cents per tract and for attending and making and reporting sale twenty five (25) cents per tract, and there shall be allowed to the printer for publishing said notice fifty (50) cents per tract, which fee shall be taxed as costs against each several tract to be paid by the purchaser or person discharging said lien before sale and the said commissioner shall report his proceedings hereunder to the next term of this court.

To which judgment and decree of the Court the defendant A. H. Chatfield Trustee excepted at the time and prayed an appeal to the Supreme Court of the State and asked and was granted sixty days in which to present and file his bill of exceptions.

(Signed) E. D. ROBERTSON, *Chancellor.*

17 [Endorsed:] #589 Equity. Entered in Chancery Record "G" Page 463 Board of Directors of St. Francis Levee District *vs.* Memphis Land & Timber Co. Levee Taxes 1897.

18 *Order.*

Crittenden Chancery Court, Crittenden County, Ark., July Term, 1898.

Chancery Record "G," Page 510, July 19th, 1898.

#589.

THE BOARD OF DIRECTORS OF THE ST. FRANCIS LEVEE DISTRICT
vs.
THE MEMPHIS LAND AND TIMBER CO.

Renewal Order of Sale.

On this day comes the plaintiff by R. J. Williams its attorney and the defendant by L. C. Going its attorney and this cause coming on to be heard the defendant by its said attorney asked leave to withdraw the petition for a restraining order issued herein in vacation, which was granted by the Court, thereupon the plaintiff by its said attorney moved the court to vacate and annul the restraining order made in vacation on the petition of the said defendant and to renew the order of sale made at the last term of this court and on consideration thereof the court doth order and adjudge that the restraining order issued herein be vacated annul-ed and set aside, and the court doth further order that the commissioner of this court, appointed at the last term, to execute the decree entered in this cause be and he is hereby directed to advertise and sell the lands claimed by the defendants to satisfy the amount adjudged to be due plaintiff if the same with interest thereon be not paid by the said defendants within sixty days from this date, according to the terms and in the manner prescribed by said decree and that he report his proceedings herein to the next term of this court.

19 *Report Filed.*

Crittenden County Chancery Court Record "G."

July Term, 1898, Page 519.

BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT
vs.
MEMPHIS LAND AND TIMBER CO.

On this day the commissioner in this cause files his report of sale.

Crittenden County Chancery Record "G."

July Term, 1898, Page 529.

THE BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT
vs.
THE MEMPHIS LAND AND TIMBER CO. ET ALS.

Decree of Confirmation.

Now on this day the report of the commissioner heretofore filed in this cause, coming up for confirmation and no exceptions having been filed herein, which report is in words and figures as follows to wit:

#589.

Commissioner's Report of Sale.

In the Crittenden Chancery Court, July Term, 1898.

"THE BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT
vs.
THE MEMPHIS LAND & TIMBER CO. ET ALS.

To the Hon. E. D. Robertson, Chancellor:

The undersigned as the Commissioner appointed by the Court to execute the decree rendered on the 14th. day of February 1898 at the January Term 1898 of said Chancery Court in the above entitled cause, respectfully reports that after giving notice for two consecutive weeks, prior to day of sale by publication in the Marion Reform, a newspaper in said county for the time and in
20 the manner prescribed by law and the said decree, he did on the 13th. and 14th. days of June 1898 at the Court House doors in Crittenden County, Arkansas, within legal hours, offer the lands described in the statement below for sale to the highest bidder for cash in hand; and at said sale said lands were struck off and sold to the persons whose names appear opposite each tract for the prices and sums therein set forth, they being the highest bidder therefor.

Township 3 North, Range 7 East.

Johnson & Boyce, East ½ and North West of North East ¼ section 3, 120 acres, valued at $240.00 for the taxes of 1896, $4.80 Interest $0.35 Penalty $1.20 cost .95 total $7.30 sold to C. W. Hunter for $8.10.

John Johnson, owner, West ½ South west ¼ Section 3, 80 acres valued at $160.00 for the taxes of 1897 $3.20, Interest .05, penalty .80 cost 95 cents total taxes due $5.00 sold to C. W. Hunter for $5.80.

John Johnson owner, West ½ South east ¼ section 4, 80 acres valued at $160.00 for the taxes of 1897, taxes $12.80 interest 20 cents, penalty $3.20 cost 95 cents total taxes $17.15, sold to C. W. Hunter for $5.80.

John Johnson owner, west half of Section 4, 320 Acres valued at $640.00 for the taxes of the year — total taxes $17.15 sold to C. W. Hunter for $200.50.

John Johnson owner, all section 9, 640 acres valued at $1280.00, taxes for the year 1897, interest 40 cents, penalty $6.40 cost 95 cents total taxes, $33.35 sold to L. P. Berry for $360.00.

A. B. Ballard owner, North East ¼ section 31 T. 4 N. R. 7 E. 160 acres valued at $320.00 for the taxes for the years 1896 and 1897, taxes $12.80 Interest 58 cents, penalty $3.20, costs 95 cents total taxes, $17.53 sold to A. Hackler for $18.50.

21 Township 4 North, Range 7 East.

A. B. Ballard owner, West half and south east quarter section 32, 480 acres valued at $690.00 for the taxes for the years 1894, 1895, 1896 and 1897, interest $4.30 penalty $14.40 costs 95 cents total taxes, $77.27 sold to C. W. Hunter for $78.25.

A. B. Ballard owner west half of North east quarter of section 32 80 acres valued at $160.00 taxes for the years 1894–1895–1896–1897 interest 72 cents, penalty $2.40 costs 95 cents, total taxes $13.67 sold to C. W. Hunter for $14.50.

Recapitulation

J. T. HADEN,
Commissioner.

Marion, Arkansas, July 20th, 1898.

Endorsed: Filed July 20th, 1898, J. T. Haden, Clerk.

"and it appearing to the court that the property was duly and legally advertised for sale as provided by law and the decree of the court and that said sale was made at the time and place and in the manner prescribed by the order of the Court, and that said sale was in all things regular and fair that the said property was sold for a sum larger than the amount adjudged to be due the plaintiff and which was adjudged to be a lien on said lands and that there is now in the hands of the Commissioner the sum of —— belonging to the plaintiff and that there is money in the hands of the Commissioner belonging to the owners of said lands prior to and at the time of the sale bid for said land and paid by the purchasers in excess of the sum adjudged to be due thereon.

It is therefore considered ordered, adjudged and decreed that the said sale be and the same is in all things approved and confirmed except to the lands claimed by the following persons to wit, * * * and that as to the lands last above described the parties praying to be allowed to redeem the same, the prayer of the petitioners is hereby granted; it is therefore considered ordered, and ad-
22 judged by the court, that the said sale as to the said lands last above described be set aside and annulled and except the

East half North west quarter section 9, and the west half North west quarter section 9, all in township 8 North Range 6 East, petitioners to redeem which is now pending before the court.

It is further ordered that the Commissioner pay over to the Treasurer of the St. Francis Levee District the amount reported to be in the hands of the said commissioner within ten days from this date, and it is further ordered that the said commissioner pay over to the owners of said lands at the date of said sale the amount of money bid and paid for said lands by the purchasers thereof, in excess of the amount adjudged to be due from said lands.

It is further ordered that the Commissioner pay over to the purchasers of the lands, which by the order of the Court have been redeemed from the sale, the amount paid to the Commissioner by such purchasers with interest paid, and it is further ordered that a writ of possession be issued by the Clerk at the request of any of the purchasers of the lands reported as sold in this cause.

Crittenden County Chancery Court Record "G."

January Term, 1899, Page 567.

BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT
vs.
MEMPHIS LAND & TIMBER CO. ET ALS.

Report of Sale Filed.

On this day the comissioner in this cause files his amended report herein.

23 *Report of Commissioner.*

Crittenden County Chancery Court Record "G."

January Term, 1899, Page 570.

BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT
vs.
MEMPHIS LAND AND TIMBER CO. ET ALS.

Supplemental Report of Commissioner.

On this day the Commissioner files his supplemental report herein.

Petition John Johnson Filed.

Crittenden County Chancery Court Record "G."

January Term, 1899, Page 570.

BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT
vs.
MEMPHIS LAND AND TIMBER CO. ET ALS.

On this day the petition of John Johnson is filed in this cause.

24

Petition John Johnson Denied.

Crittenden County Chancery Court Record "G."

January Term, 1899, Page 575.

BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT
vs.
MEMPHIS LAND AND TIMBER CO. ET ALS.

John Johnson this day comes into court and files his petition to be allowed to pay the judgments herein embracing the taxes penalties and costs and the costs of this suit with reference to the W. ½ of the S. W. ¼ of section 3; West half of the South east ¼ of section four (4) the west half of section four (4) and section nine (9) all in township 3 North Range 7 East and to redeem the said lands from the sale herein made, and to discharge them from further proceedings in this suit; and tenders the amount of money necessary for the said purpose or else to be paid the surplus in Court of the purchase money after paying the taxes penalties and costs.

It is therefore ordered that the said petition of the said John Johnson to set aside the Confirmation of the said sale be denied and that the confirmation stand as made.

It is further ordered that the Clerk and Commissioner pay to the said John Johnson or his solicitor- of record Randolph & Randolph, the sum of money remaining in his hands as the proceeds of the sales of the said tracts of land respectively, after paying the taxes, penalties and costs and costs herein, and the proportion of the costs of this suit chargeable to said tracts of land respectively and take the proper receipt therefor.

25 *Deed to Hackler.*

Crittenden County Chancery — Record "G."

January Term, 1899, Page 585.

BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT
vs.
THE MEMPHIS LAND & TIMBER CO. ET ALS.

Deed to A. Hackler.

On this day J. T. Haden the Commissioner appointed to execute the decree rendered in this cause, produces to the Court here his deed to A. Hackler, the purchaser of the lands and premises mentioned and described in said decree and upon examination of said deed the same is in all things approved.

And thereupon the said J. T. Haden, here in open court acknowledged that he had executed said deed to A. Hackler for the lands and premises therein described to wit:

N. E. ¼ Section 31 T. 4 N. R. 7 E. 160 acres, for the consideration and purposes therein mentioned and set forth; and it is ordered by the court that a copy of this order and acknowledgment be entered upon said deed and certificate by the Clerk under the seal of this court, to the end that the same may be entitled to record.

26 *Deed to Hunter Approved.*

Crittenden County Chancery Court Record "G."

January Term, 1899, Page 585.

BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT
vs.
THE MEMPHIS LAND AND TIMBER CO. ET ALS.

Deed to C. W. Hunter.

On this day J. T. Haden, the Commissioner appointed to execute the decree rendered in this cause, produces to the Court here, his deed to C. W. Hunter the purchaser of part of the lands and premises mentioned and described in said decree, and upon examination of the deed the same is in all things approved. And thereupon the said J. T. Haden here in open court acknowledges that he has executed said deed to C. W. Hunter for the lands and premises therein described to wit:

E. ½ and N. W. ¼, section	3	T. 3. N. R. 7 E.	120 acres
W. ½ S. W. ¼ "	3	T. 3. N. R. 7 E.	80 acres
W. ½ "	4	T. 3. N. R. 7 E.	320 acres
W. ½ S. E. ¼ "	4	T. 3. N. R. 7 E.	80 acres
All "	9	T. 3. N. R. 7 E.	640 acres
W. ½ and S. E. ¼ "	32	T. 4. N. R. 7 E.	480 acres
W. ½ N. E. ¼ "	32	T. 4. N. R. 7 E.	80 acres

for the considerations and purposes therein mentioned and set forth; and it is ordered by the Court that a copy of this order and acknowledgment be entered upon said deed and certified by the Clerk under the seal of this court, to the end that the same may be entitled to record.

27 *Leave to File Bill of Review.*

Crittenden County Chancery Court, Record "H."

September Term, 1899, Page 5.

THE BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT
vs.
MEMPHIS LAND AND TIMBER CO. ET ALS.

A. B. Ballard and Mrs. Josephine W. Ballard come by their solicitors and on their motion leave is given them to file herein their answer, motion, petition and Bill of Review herein, and be made parties to this suit with reference to the N. E. ¼ of Section 31, The Southwest ¼ of section 32, and the south ½ of the North west ¼ of section 32, all in township 4 North Range 7 East, and the said pleading is ordered to be filed and they are made defendants and parties to this suit for the purposes set out in said pleadings.

And thereupon the said C. W. Hunter by L. P. Berry Esq. his attorney enters his appearance herein and has ninety days given him within which to plead answer or demur herein.

28 *Leave to File Answer.*

Crittenden County Chancery —, Record "H."

September Term, 1899, Page 6.

BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT
vs.
THE MEMPHIS LAND & TIMBER CO. ET ALS.

Richard H. Allen, Harry Allen, Mary L. Latham, and John C. Latham her husband, Ellen Allen, Thos. H. Allen Jr. a minor by —— his next friend and guardian *as litum*, Floy G. Allen, John C. Latham in his own right, Jno. B. Leech, Samuel B. Leech, all Executors of Jno. B. Leech, deceased, Jno. Fritz, The Phœnix Fire and

Marine Insurance Co., the Memphis Savings Bank, the City National Bank, located at Cairo Ill. and C. W. Edmonds as assignee of the Hill Shoe Co. all come by their respective solicitors and on their motion leave is given them to file herein their answer, motion, petition and Bill of Review herein and to be made parties to this suit with reference to the west half of the South west ¼ of section 3, West half of the South east ¼ of section 4, and the west ½ of section 4, all section 9, the North west ¼ of section 10, the west half of section 4, west half of the north east ¼ of section 4, and west half of the south west ¼ of section 3, all in township 3, North Range 7 East, and the said pleadings is ordered to be filed and all the said parties are made defendants and parties to this suit for the purposes set out in the said pleading.

And thereupon the said C. W. Hunter by L. P. Berry Esq. entered his appearance herein and has ninety days given to plead, answer or demur herein.

29 *Answer to Motion of Ballard.*

In the Chancery Court of Crittenden County, Arkansas.

Eq. D., No. 539.

THE BOARD OF DIRECTORS OF THE ST. FRANCIS LEVEE DISTRICT
vs.
THE MEMPHIS LAND AND TIMBER COMPANY, and Others.

To the Hon. E. D. Robertson, Chancellor:

The answer and motion of A. B. Ballard, who is a citizen of the State of Forlida, residing at Tampa, and Mrs. Josephine W. Ballard, who is a citizen of the State of Georgia, residing at Atlanta, also to be taken and considered as a petition, under Sec-. 5839 5843, Sandels & Hill's Digest, and as an original Complaint, under Sec-. 4197-4199 of same and under Sec-. 6120-6124 of same, and the amendments thereto, and as a Bill of Review under the Chancery practice, as appears by the prayer herein.

(1.)

The above named parties state and show that A. B. Ballard, now deceased, the father of the defendant A. B. Ballard, and the former husband of the defendant Mrs. Josephine W. Ballard, departed life many years since, being then the owner of the following described and other lands, situated in Crittenden County, Arkansas, to wit: The North East quarter of Section 31; the Southwest quarter of Section 32: and the South half of the North west quarter of section 32, all in township 4 North, Range 7 East. The said land upon the death of A. B. Ballard, who died intestate, descended to the defendant A. B. Ballard, as his sole heir at law, the defendant Mrs. Josephine W. Ballard, as widow, having the right of dower therein, under the statute in the behalf.

The said above described lands and other lands were granted and patented to the State of Arkansas, under and by the act of Congress

approved September 4th. 1841, as Internal Improvement
30 Land. It was sold by the State of Arkansas as follows: the north east quarter of section 31, t- F. W. Royster, on the 19th. day of January, 1848, who transferred his rights to said A. B. Ballard. And on the 25th. day of August 1857, the State of Arkansas made A. B. Ballard a Grant and Patent for the said tract of land, thereby vesting the title in him.

The South west quarter of section 32 and the south half of the North west quarter of section 32, were sold by the State of Arkansas to E. F. Watkins, on January 19th. 1848, who transferred his right to the said A. B. Ballard. And on the 7th. day of October 1857, the State of Arkansas Granted and Patented to the said A. B. Ballard the said tracts of land, and vested the title in him.

The above facts appear in the records of the office of the Commissioner of State Lands, and if required, these defendants will produce certified copies of the patents. They deem the same unnecessary, however, for the purposes of this suit.

(2.)

In the suit in the Circuit Court of Crittenden County, wherein the State of Arkansas on relation of Crittenden County, was plaintiff, and John Crawford, Auditor, and others, were defendants, the said described lands, and other lands, were condemned to be sold for the non-payment of taxes then found by the decree in the said suit to be due to the State, and the County of Crittenden.

Thos. B. Turley, a citizen of the State of Tennessee, became a purchaser of the said tracts of land, above described, in the said suit, at a sale made by the Commissioner appointed by the decree therein, and transferred his purchase of the same to the Memphis Land and Timber Company, a corporation of the State of Tennessee, located at Memphis, and A. H. Ferguson, the Commissioner appointed by the Circuit Court in the said suit, and who made the sale, conveyed by a deed to be found of record in the office of the Recorder of Crittenden County, Book A. Vol. 2, p. 545 and following and confirmed by the Court in the said suit, the said tracts of land to the Memphis Land & Timber Co.

31 Reference is here made to the record of said deed, and a copy will be produced as a part of this answer, on the hearing, if required.

The said Memphis Land and Timber Co. afterwards, by a deed to be found of record in the office of the Recorder of Crittenden County, in Book C. Vol. 2 p. 106, conveyed the said above tracts of land to the defendants here, A. B. Ballard and Mrs. Josephine W. Ballard. The record of the said deed in the Recorder's office is here referred to, and a copy thereof will be produced on or before the hearing if required.

(3.)

The defendants were thus the owners of the said above described tracts of land, on the 21st day of December, 1897, when the suit was begun in this court, styled the Board of Directors of the St. Francis

Levee District *vs.* the Memphis Land and Timber Co. and others, being the same suit in the caption of this answer mentioned.

These defendants were not made parties by name to the said suit, *as* they have never heretofore appeared therein. They had no knowledge or notice of the commencement or pendency of the said suit, until after the proceedings hereinafter to be stated had been had. The defendant, Josephine W. Ballard, was during all that time, and is yet, a citizen of the State of Georgia, residing therein, and outside the limits of the State of Arkansas, and the defendant, A. B. Ballard, was during all that time a citizen of the State of Florida, and residing in that State, and outside of the limits of the State of Arkansas. They had no knowledge or notice of the levy of the Levee taxes sued for, or of the legislation of the General Assembly authorizing the same.

(4.)

These defendants claim that they were never legally or properly brought before the Court here, by any lawful Warning Order or other publication, or other constructive service of process, in the said suit.

32 Nor have they had any such notice of this suit, or the pendency thereof, as binds or concludes them by the proceedings and decrees therein, or so as in any way to affect or impair their title to the tracts of land aforesaid, hereinbefore described, by the sale thereof, and proceedings with respect thereto, hereinafter to be stated.

(5.)

No sufficient affidavit of the plaintiff herein was filed in the Clerk's office of this Court, at, or after the commencement of this suit, stating positively or sufficiently any one of the facts required by the statute, Sandels & Hill's Digest Sec. 5679, or any other statute applicable in the premises, authorizing the Clerk of this Court to make an order upon the complaint herein, or otherwise warning these defendants, or either of them, to appear in this suit as required by law.

The Clerk of this Court did not make upon the complaint in this cause, or otherwise, any other order warning these defendants, or either of them, to appear in this suit, as required or obliged them to appear therein, or bound them by the proceedings which have been had therein.

No such publication has ever been made of any such warning order in this cause, as required or obliged these defendants to appear in this suit, or as had the effect of binding them by the proceedings which have been had.

No such proof has been made in this suit of the publication of any warning order therein, as has established the fact that any warning order has been properly and sufficiently published, or as conferred upon this court jurisdiction of these defendants personally, or with respect to the said tracts of land, before described, or either of them.

These defendants here positively deny that they or either of them,

or the lands before described, have ever been brought before this court or within its jurisdiction, or that it has ever had any power to decree the sale of same, or pass the title.

33 (6.)

These defendants were not, nor was either of them, stated in the Complaint in the said suit, to be the owners of the said tracts of land, or either of them, nor were they, or either of them, stated to be the persons who claimed to be the owners of the said tracts of land.

The evidence of the title of these defendants to the said tracts of land, appeared of record as aforesaid, in the office of the Commissioner of State Lands, and also of record in the office of the Recorder of Crittenden County, Arkansas. The ownership of the lands was therefore known to be the plaintiff herein, the Board of Directors of the St. Francis Levee District, and it has never been alleged in the said complaint, or elsewhere in the said suit, that the ownership of the said tracts of land was unknown to the plaintiff in this suit, the Board of Directors of the St. Francis Levee District. And the said tracts of land, or either of them, to the unknown owners thereof. Nor has it ever been alleged in any such notice, nor in the complaint herein, as before stated, nor in any other pleading in this suit, that the owners of the said tracts of land, or either of them, were unknown to the plaintiff in this suit, the Board of Directors of the St. Francis Levee District.

And no notice of the pendency of the suit as against non-residents of the County of Crittenden, and unknown owners respectively, with reference to the said tracts of land, when this suit was pending, has ever been given by publication weekly, for four weeks prior to the first day of a term of this Court, or prior to the day of the term thereof, on which the final judgment complained of for the sale of the said lands was entered. And so these defendants say that the judgment or decree hereinafter stated, was rendered or pronounced without notice to these defendants, actual or constructive, and that the same and the proceedings thereunder, have always been and are null and void.

34 (7.)

The judgment or decree of this Court in this suit, of the 14th. day of February, 1898, found and decreed that the Northeast quarter of section 31, mentioned above, was indebted to the plaintiff herein for certain levee taxes, to wit: in the sum of $17.53 as more fully appears by the said judgment, or decree.

It also found and adjudged that the west half, and the South east quarter of section 32, embracing the Southwest quarter of Section 32, one of the tracts above described, and also embracing the south half of the North West quarter of Section 32, another of the tracts above described, as one compact body, and containing about 480 acres of land, was indebted to the plaintiff here for certain Levee taxes, in another aggregate sum to wit:—the sum of $77.27, as more fully appears by the said judgment or decree.

These defendants had no title to, or interest in, the North half of the North West quarter of said section 32, nor in the South east quarter of said section 32, but their said tracts of land, to wit:—The southwest quarter of Section 32, and the south half of the North West Quarter of Section 32, were taxed and charged jointly along with the said other tracts, in which they had no title or interest, for the amount of the taxes on the whole 480 acres, to wit, $77.27, and the same were adjudged or decreed to be sold therefor.

For the reason just stated, these defendants claim and insist that the said judgment or decree as to the said South West Quarter of Section 32, and the South half of the North West Quarter of Section 32, and the sale thereof, made thereunder, as will be hereinafter stated, were absolutely null and void.

35 They also claim and insist that the said judgment or decree, and the sale thereunder, were and are void, for the reasons hereinbefore stated and the reasons hereinafter to be stated.

The said judgment or decree of the 14th. day of February, 1898, adjudged and decreed that the three tracts of land herein first described, to wit: The North East quarter of Section 31: the Southwest quarter of Section 32, and the South half of the Northwest quarter of Section 32, were indebted in the manner before stated to the plaintiff herein in the sums before stated, and that the same constituted a lien on the said tracts of land respectively, and that the clerk of this court, as Commissioner, sell the said tracts of land to the highest bidder for cash, having first advertised the said lands for sale in some newspaper for two weeks weekly, and that he execute a deed of conveyance to the purchaser thereof, and receive therefor a fee of $1.00.

It is further decreed that there should be allowed the said Commissioner fees as follows:—For furnishing the printer with a list of the lands to be advertised, 5c. per tract: for attending and making and reporting the sale 25c. per tract: and that there should be allowed to the printer for publishing the said notices, 50c. per tract, which fees should be taxed as costs against the said several tracts of land, to be paid by the purchaser, or person discharging the lien before the sale.

These defendants submit that these provisions and requirements of the decree were unauthorized, and rendered the same void. The said judgment or decree then required the Commissioner to report his proceedings thereunder to the Court here at the next term.

36

(8.)

J. T. Haden, the Clerk of the Court here, appointed Commis-ioner, as before stated, filed his report of the sale made by him under the said decree, on the 20th. day of July, 1898, as more fully appears of record in Court here.

In the said report he stated that he had sold the North East quarter of Section 31, containing 160 acres, to A. Hackler, who, as these defendants are informed, and believe and state is a married woman, and the wife of J. P. Hackler, for the sum of $18.50; and that he had sold the West half, and the South east quarter of Sec-

tion 32, as one compact body, containing 480 acres, to C. W. Hunter, for $78.25.

The said report, as these defendants are informed, and believe and state, has been confirmed by a decree of this Court rendered at its last term, but for certainty as to that matter, they here refer to the record remaining in Court, as they have no knowledge.

They state, however, upon information and belief, that no deeds have been made by the said Haden, as Commissioner, either to the said A. Hackler, or to the said C. W. Hunter, for either of the said tracts of land so purchased by them, or if such deeds have been in fact executed, that this court has not heretofore sanctioned or ratified or approved any such deeds.

As soon as these defendants ascertained *of* the sale of their lands to the said A. Hackler, and C. W. Hunter, to wit: about the 10th. day of March, 1899, they tendered to each the said A. Hackler, and her husband J. P. Hackler, and to the said C. W. Hunter, the purchasers thereof, the sums they had bid and paid out for the said tracts of land, and such additional sums as they were entitled to, or considered themselves entitled to, in order to permit or allow the redemption of the said tracts of land respectively. They then --

37 there asked the said A. Hackler, and J. P. Hackler, her husband, and the said C. W. Hunter, to designate the sums they demanded for such redemption. Each refused to name any sum that would be received, and denied the right of these defendants to make redemption at all, and claimed and insisted that they had acquired the absolute title to the said tracts of land respectively, by their said respective purchases, and were the owners thereof, and that these defendants had no title thereto, or interest therein.

These defendants claim and insist for the reason before stated and the reasons hereinafter to be stated, that the said sales and purchases were and are absolutely void. They state further that they had no notice of the pendency of this suit, or of the said sale before stated, or the confirmation thereof, until after the said confirmation had taken place, and was completed. They have, therefore, had no opportunity of appearing in this suit, or of objecting to the confirmation of the said report of sale, since they received notice of this suit, or the said sale, until the present time, which is their first opportunity. They bring into Court, and here offer to pay to the Clerk, or as the Court may order, such sums as are required to be paid to redeem the said lands, and they pray the Court to fix the amounts.

(9.)

These defendants further state that the recital in the decree or judgment of sale herein, of the 14th. day of February, 1898, before referred to, that they, or either of them, by name, or by description, or as unknown owners of the tracts of land before described, or any tracts of land proceeded against in this suit, had been severally constructively summoned to appear in the said suit, by publication in a newspaper published in Crittenden County, Arkansas, weekly

for four weeks, before the date of the said judgment or decree, and that proof of such fact had been previously filed in this suit, was and is entirely untrue. They deny the same. They here take issue thereon and ask the leave of the Court to contest the truth thereof, and to produce evidence, and make proof on the subject, to the contrary.

38 These defendants further state and show that nothing in the complaint herein, when taken as confessed, as the judgment or decree recites it was, authorized or justified the said decree or sale against these defendants, or either of them, or with respect to their said tracts of land, or either of them.

No testimony was introduced therein as to the liability of these defendants, or either of them, or their said tracts of land, for the said sums so adjudged or decreed against them respectively, as before stated. And the Court here was not authorized to award a decree *pro confesso* against these defendants, or either of them, or as to their lands, in favor of the plaintiff here for the amounts of the taxes, interest, penalties and costs, claimed to be due, as more fully appears by the said judgment or decree, which is now here referred to.

And for the reasons before stated, and the reasons hereinafter to be stated, these defendants insist that the said judgment or decree as to them, and their said tracts of land, is without authority, and absolutely void.

(10.)

And these defendants particularly attack and deny the valid-ty of the following provisions of the Statute on which the suit herein is based, and on which the judgment and decree aforesaid and the sale thereunder, are rested, to wit. Those provisions of Act #71, of the Acts of the General Assembly of the year 1895, approved on the 2nd. day of April, 1895, which declare: That notice of the pendency of such suit shall be given as against non-residents of the County, and unknown others respectively, when such suits may be pending, by publication weekly, for four weeks prior to the day of the term of the court on which judgment may be entered for the sale of the land, in some newspaper published in the County where such suit may be pending, then give the form of the notice and provide that there shall follow it a list of supposed owners, with a descriptive list of the delinquent lands, and the amounts due

39 thereon respectively, and a conclusion to such notice.

And those declaring: That as against any defendant who resides in the County where such suit may be brought, and who appears by the record of deeds in said County, to be the owner of any lands proceeded against, notice of the pending suit shall be given by the service of personal summons of the Court, at least twenty days before the day on which the said defendant is required to answer as set out in the summons, and that actual service of summons shall be had, where the defendant is in the county, or where there is an occupant upon the land. And that the said suit shall stand for trial at the first term of the Court after complaint may be filed, if such four weeks, in the case of a non-resident, or unknown owner, as

aforesaid, or said twenty days in the case of a resident defendant, as aforesaid, shall expire, either before the first day of the term, or during the term of Court, in which said suits are brought respectively, unless a continuance is granted for good cause, shown, within the discretion of the Court. And that in all cases where notice has been properly given, as aforesaid, and where no answer has been filed, or if filed, and the cause decided for the plaintiff, the Court by its decree, shall grant the relief as prayed in the complaint, and shall direct the said Commissioner to sell the lands described in the decree, at the Court House door of the County wherein the decree is entered, at public outcry to the highest bidder for cash in hand, after first having advertised such sale weekly for two weeks consecutively in some newspaper published in the County, or otherwise, as prescribed.

And that the said Commissioner shall by proper deeds convey to the purchasers the lands so sold, and that the titles to said lands shall thereupon become vested in such purchaser, as against all others whomsoever, saving to infants and insane persons the rights given them by section 12 of the Acts of February 15th. 1893.

40 And that said suit shall be conducted in accordance with the practice and proceedings of the Chancery Courts in this State, except as in the Act is otherwise provided: except that neither attorneys nor guardian *ad litem,* nor any provision of Section 5877 of Sandels & Hill's Digest of the Statutes of Arkansas, shall be required: and except that said suits may be disposed of on oral testimony, as in ordinary suits at law. And that this law shall be liberally construed to give said assessment lists the effect of *bona fide* mortgages for a valuable consideration, and a first lien upon the said land as against all persons having an interest therein. And that no informality, or irregularity in holding the meetings, or in the description or valuation of the lands, or in the names of the owners, or the number of acres therein, shall be a valid defense to such action.

So far as the said provisions affect the rights of these defendants to the tracts of land aforesaid, or either of them, or in this suit, their validity is denied. It is claimed that they and each of them are unconstitutional and void, so far as they affect or impair such rights. And the acts done under them are void.

The said provisions of said Act, and the said proceedings thereunder, violate Section 8, Article 2, of the Constitution of the State of Arkansas, providing that no person shall be deprived of life, liberty, or property, without due process of law.

They also violate that provision of Section 18, Article 2, which provides that the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which upon the same terms shall not equally belong to all other citizens.

They also violate that provision of Section 21, Article 2, which provides that no person shall be disseized of his estate, freehold, liberties, or privileges, or in any manner deprived of his property, except by the judgment of his peers, or the laws of the land.

41 They also violate that provision of Section 25, Article 5 of the Constitution, which provides that in all cases where a general law can be made applicable, no special law shall be enacted,

nor shall a portion of any general law be suspended by the legislature for the benefits of any particular individual, corporation, or association, nor where the courts have jurisdiction to grant the powers, or the privileges, or the relief asked for.

They also violate clause 1, Section 2, Article 4, of the Constitution of the United States, which declares that the citizens of each State, shall be entitled to all the privileges and immunities of citizens in the several states. They also violate that provision of the 14th Amendment to the Constitution of the United States, which declares that no state shall make, or enforce any law, which shall abridge the privileges or immunities of citizens of the United States: Nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

For the reason that the said legislation, and the said portions of the said judgment or decree of this Court, and the proceedings thereunder, are in conflict with the State Constitution, and the Constitution of the United States, in the particulars stated, and are therefore void, these defendants claim and insist that the said judgment or decree, and the sales made thereunder, and the report of sale, and the confirmation thereof, and any deed or deeds which have been made, are null and void, and should be set aside.

(11.)

The said C. W. Hunter, named above, and the purchaser of a portion of the tracts of land above described, is a non-resident of the State of Arkansas, and resides in the State of Tennessee. The said A. Hackler, and J. P. Hackler, her husband, are citizens of the State of Arkansas, and reside in Crittenden County. Neither of them are in possession or occupation of either of the said tracts of land.

42 *Prayer.*

In consideration of the Premises, the above named A. B. Ballard, and Josephine W. Ballard, pray that the foregoing may be taken and considered, and have the effect of their answer to the original complaint herein, and motion based thereon, as provided by the Statute, Sandels & Hill's Digest of the Statutes of the State of Arkansas, Sec. 5882.

Also, and if necessary to their relief, that it may be taken and considered as their Petition, under Sec. 5839-5843, of Sandels & Hill's Digest.

Also, and if necessary to their relief, that it may be taken and considered as an original complaint, and ordered to be filed, and to stand and proceed as such, under Sec. 4197-4199, of Sandels & Hill's Digest, and under Sec. 6120-6124, and the amendments thereto.

And also, if it be necessary to their relief, that it be taken as a Bill of Review of the decrees and proceedings in the above styled suit of the Board of Directors of the St. Francis Levee District against the Memphis Land & Timber Co. and others, Equity Docket No. 589.

That all the parties to the said suit, in which the said judgment or decree has been so rendered, and the said proceedings thereunder have been so had, including the plaintiff, the Board of Directors of the St. Francis Levee District, and the said C. W. Hunter, and the said A. Hackler, and J. P. Hackler, her husband, the purchasers of the said tracts of land, as before stated, may be considered and treated as defendants to this Petition, Motion and Complaint, and as before the Court for all the purposes of their relief herein prayed. Or, if necessary, that *that* said A. Hackler, and J. P. Hackler, her husband, and the said C. W. Hunter, the purchasers respectively, of the tracts of land herein involved, as before stated, may be brought before the Court by the proper service of summons on them per-
43 sonally, or by the proper publication of the necessary warning order in such cases, and made defendants.

That on the final hearing, the decree of sale entered in the said suit, above described, on the 14th day of February, 1898, and all subsequent decrees therein, affecting them personally, or the said tracts of land, or their interests therein, may be reviewed, reversed, vacated, set aside and held for naught.

That the decree entered as hereinbefore stated, in the said suit, confirming the sales of the said several tracts of land before described, to the said C. W. Hunter and A. Hackler, respectively be vacated, set aside and held for naught; and that the said report of sale be set aside, vacated and cancelled, and the sales of the said tracts of land made respectively to the said C. W. Hunter and A. Hackler, be vacated, set aside and held for naught.

That any deeds which may have been executed by the Commissioner to either the said C. W. Hunter, or the said A. Hackler, or any one claiming under or through them, by assignment, or otherwise may be cancelled, vacated and held for naught.

That their title to the said tracts of land may be cleared, and quieted, and confirmed, and declared to be complete and perfect against the proceedings in the said suit, and all the parties thereto. That they may be permitted to pay the taxes justly and legally due to the plaintiff, the Board of Directors of the St. Francis Levee District, on the said tracts of land, including all penalties, interest and costs, properly chargeable thereon, and they here bring into Court and offer to deposit or pay, according to its direction, the sum or sums of money requisite or necessary for the said purpose. Or if proper, and according to the course of the law, and the practice of the Court, they pray that they may be allowed to redeem the said tracts of land from the said C. W. Hunter and A. Hackler, and J. P. Hackler, her husband, respectively, by paying them severally and respectively, the sums of money to which they are entitled, in
44 order to effect such redemption, and they here bring into Court, and offer to pay or deposit, according to its direction, the sum or sums of money necessary to effect such redemption. Or if more appropriate and according to the law in such cases, that they be allowed to increase the bids of the said C. W. Hunter and A. Hackler, respectively, for the said tracts of land, as appears from the records of sale aforesaid, and they hereby offer to increase such bids

by the amount of fifty per cent. (50%) thereof, upon each bid respectively, and they here bring into court, and offer to deposit or pay, according to its direction, the sum or sums of money necessary to make good their respective bids for the said tracts of land, as so increased.

They also pray the proper judgment against the said adverse parties for costs herein. And they pray for all other just necessary and proper relief.

(Signed) RANDOLPH & RANDOLPH,
Att'ys, &c.

STATE OF FLORIDA, *County of Hillsboro:*

I, A. B. Ballard, named in the foregoing Answer, Petition and Complaint, do solemnly swear that the facts therein set forth are true, to the best of my knowledge, information and belief.

(Signed) A. B. BALLARD.

Subscribed and sworn to before me, a Notary Public in and for the said County and State, as witness my hand and seal of office as such Notary Public, at Tampa, in the said County and State. September 5th, 1899.

(Signed) D. F. CONOLEY,
Notary Public.

45 [Endorsed:] No. 589. The Board of Directors of the St. Francis Levee District *vs.* The Memphis Land and Timber Co. and Others. Answer, motion, petition and original complaint of A. B. Ballard and Josephine W. Ballard. N. E. ¼ Sec. 31, S. W. ¼ Sec. 32, S. ½ of N. W. ¼ Sec. 32, T. 4 N. R. 7 E. Filed Sept. 25th, 1899. J. T. Haden, Clerk, By R. F. Ward, D. C. Randolph & Randolph.

46 *Agreement of Counsel.*

Crittenden County Chancery Court Record "H."

September Term, 1900, Page 142.

BOARD OF DIRECTORS OF ST. FRANCIS LEVEE DISTRICT
vs.
THE MEMPHIS LAND AND TIMBER CO. ET ALS.

It is agreed that without any plea by C. W. Hunter to the answer, motion, petition or bill of review or original complaint of A. B. Ballard and Josephine P. Ballard in the above entitled cause that the matter there presented shall be heard as an agreed case upon the agreed statement of facts heretofore filed in this cause and the evidence therein referred to.

RANDOLPH & RANDOLPH,
For A. B. BALLARD AND
JOSEPHINE P. BALLARD.
L. P. BERRY,
For C. W. HUNTER.

47 *Agreement of Counsel.*

In the Chancery Court of Crittenden County, Ark.

589.

BOARD OF DIRECTORS OF THE ST. FRANCIS LEVEE DISTRICT, Plaintiff-,
vs.
MEMPHIS LAND AND TIMBER COMPANY AND OTHERS.

It is agreed that without any plea by C. W. Hunter to the answer, motion, petition or Bill of Review or original complaint of A. B. Ballard and Josephine Ballard in the above entitled cause that the matters there presented shall be heard as an appeal case, upon the agreed statement of facts heretofore filed in this cause and the evidence therein referred to.

RANDOLPH & RANDOLPH,
For A. B. BALLARD AND
JOSEPHINE BALLARD.
L. P. BERRY,
For C. W. HUNTER.

It is ordered that the above agreement be put of record.

48 *Agreed Statement of Facts.*

In the Chancery Court of Crittenden County, Arkansas.

Equity Docket # 589.

BOARD OF DIRECTORS OF THE ST. FRANCIS LEVEE DISTRICT, Plaintiffs,
vs.
MEMPHIS LAND AND TIMBER COMPANY AND OTHERS, Defendants.

In the matter of the controversy between A. B. Ballard and Josephine W. Ballard on the one part, and A. Hackler, wife of J. P. Hackler, and C. W. Hunter on the other part, arising upon the answer and motion of the said A. B. Ballard and Josephine W. Ballard, filed herein on the 25th day of September, 1899, and the answers or replies thereto of the said A. Hackler, J. P. Hackler, and C. W. Hunter for the purposes of the trial of the Issues between the said parties, presented as above.

The following state of facts is hereby agreed on and this agreement is to have the effect of proof duly made upon the said issues as to the basis for a decision of the controversy between the said parties.

(1.)

It is agreed that A. B. Ballard the ancestor, who was the father of A. B. Ballard and husband of Josephine W. Ballard, and who died

intestate many years ago, leaving the one his widow, and the other his heir at law, acquired the several tracts of land to wit: Northeast ¼ of Section 31, the Southwest quarter of Section 32, and the South ½ of the Northwest ¼ of Section 32, all in Township 4, North Range 7 East, at the times and in the manner stated in paragraph 1, of the said answer of the said A. B. Ballard and Josephine W. Ballard, mentioned above.

49 It is further agreed that the muniments of title or deeds by which the said parties held the said lands were all of record in the office of the Recorder of Crittenden County, prior to the 1st day of January, 1893.

(2.)

It is further agreed that in the suit in the Crittenden Circuit Court styled State of Arkansas on the relation of Crittenden County, Plaintiff, *vs.* Jno. Crawford, Auditor and others, Defendants, the said lands described in the last preceding paragraph were condemned to be sold for the non-payment of taxes due the State of Arkansas, and the County of Crittenden.

It is further agreed that said lands were sold and were purchased by Thos. B. Turley, and that he transferred his purchase to the Memphis Land & Timber Co.

It is further agreed that A. H. Ferguson, Commissioner in the said suit conveyed the said land by a deed duly executed and duly approved by the Circuit Court in the said suit to the said Memphis Land & Timber Co., under the said purchase of the said Turley so assigned to the said Memphis Land & Timber Co.

It is further agreed that the Memphis Land & Timber Co. afterwards by a deed executed and acknowledged in due form of law conveyed the said tracts of lands to the said A. B. Ballard and Josephine W. Ballard.

The said facts are fully set out in paragraph 2 of the said answer of the said A. B. Ballard and Josephine W. Ballard. The deeds referred to in the said paragraph of the said answer or copies of the records thereof in the office of the Recorder of Crittenden County may be read in evidence by either party if desired.

(3.)

It is further agreed that the said A. B. Ballard and Josephine W. Ballard were the owners of the said land in the manner before stated on the 21st day of December 1897, when this suit was begun.

50 It is further agreed that Josephine W. Ballard at that time resided at Atlanta, in the State of Georgia, and that A. B. Ballard at that time resided in the State of Florida, at Tampa, and neither within the State of Arkansas.

It is further agreed that they have remained citizens and residents of Georgia and Florida respectively ever since the said date.

It is further agreed that each one of them would testify that they had no knowledge of the present suit, or i-s pendency, or that taxes for levee purposes had been levied by the Board of Directors of the St. Francis Levee District upon the said lands, prior to the date of

the sale of said lands in this suit, and the purchase thereof by the said C. W. Hunter and A. Hackler respectively, or that any law on that subject had been enacted.

(4.)

It is further agreed that the record of this suit including the original complaint and any amendment that may have been made thereto, and the warning order, or order of publication, and the proof of the publication thereof, any summons or other process that may have been issued in the course of the suit, and the returns of the sheriff, or other officer on all process, and the publication of the warning order or notice, made in the Marion Reform, a newspaper published in Crittenden County, and the pleadings and proceedings in this suit, including all the orders, judgments, and decrees on the minute book of the Court, and any and all reports of sale and deeds made by the Commissioner, having reference to the said lands described above, may be used, and read in evidence by either of the parties to this controversy for all the proper purposes thereof, subject only to the objections for irrelevancy and incompetency, all other objections being waived. And if the original record, process, pleadings, proof, or proceedings or other paper or record cannot be found, then a true or duly certified copy thereof may be produced and used in evidence in the place of the originals, and with the like effect.

51

(5.)

It is further agreed that the Clerk of this Court was allowed a fee of One Dollar ($1.00) for making the deed to each the said C. W. Hunter and A. Hackler conveying the lands conveyed to them respectively under the purchases made by them as stated above. And that the Clerk was allowed for furnishing the printer with a list of the said lands to be advertised, Five Cents (5c.) for each tract. And further he was allowed for attending and making a report of the sale, the sum of Twenty-five Cents (25c.) for each tract of the said land. And that the printer for printing and publishing the notices of the said lands was allowed the sum of Fifty Cents (50c.) for each tract of the said lands. And it is further agreed that the said sums were taxed as costs against the said lands described above, and were paid out of the proceeds of the sale thereof by the Commissioner after the sales had been completed by the purchasers.

(6.)

It is further agreed that the said A. B. Ballard and Josephine W. Ballard made the tenders to the said C. W. Hunter and A. Hackler respectively stated in Par. 8 of their answer and motion filed herein on the 25th day of September 1899, and in the manner and at the times stated in the said answer, and that the said C. W. Hunter and A. Hackler respectively refused to receive such tenders, and severally refused to state the amounts that they claimed they were entitled to receive in order to redeem the said tracts of land respectively. This agreement shall be filed as a part of the record of the suit and treated as such in the Court below and in the Court of Appeals, should the

case be taken there and either party is to have the benefit thereof for the purposes of the said suit and the appeal.

Done this 11th day of September 1900.

RANDOLPH & RANDOLPH,
For A. B. BALLARD &
JOSEPHINE BALLARD.
L. P. BERRY,
For C. W. HUNTER.

52 [Endorsed:] Eq. Docket #589. Board of Directors of the St. Francis Levee District *vs.* Memphis Land & Timber Co. *et als.* Agreed State of Facts. Controversy between C. W. Hunter, A. Hackler, and A. B. Ballard and Josephine W. Ballard. Filed Sept. 24th, 1900. J. T. Haden, Clerk, By R. F. Ward, D. C. Randolph & Randolph.

53 *Deed to A. Hackler.*

This indenture, made this 16th. day of January, 1899, by and from J. T. Haden, as Commissioner in Chancery, party of the first part hereto, and A. Hackler, party of the second part hereto, witnesseth: Whereas, at a term of the Chancery Court, begun and held in and for the County of Crittenden and of the State of Arkansas, on January 17th. 1898, it was by said Court, on the 14th. day of February, 1898, a day of said term, among other things, ordered, adjudged and decreed in a certain cause then pending therein, between the Board of Directors of the St. Francis Levee District, as Complainant, and the Memphis Land & Timber Co. *et als.* were defendants, that one—Myers Sneed, Wood & Hill & A. B. Ballard (he being one of said defendants in said cause) pay to the Board of Directors of the St. Francis Levee District complainant in said cause, the sum of Sixty One and 21/100 Dollars, as taxes, interest, penalty and costs, due to said Board of Directors St. Francis Levee District, from said defendant above named for the years 1894, 1896, 1897, on the following lands, lying, situate and being within the limits of the St. Francis Levee District, in said Crittenden County to wit:

N.	½	Section	21,	T. 3	N.	R. 7	E.	220 acres,
N. W.	¼	"	29,	T. 4	N.	R. 7	E.	160 "
S. W.	¼	"	30,	T. 4	N.	R. 7	E.	160 "
N. E.	¼	"	31,	T. 4	N.	R. 7	E.	160 "

which sum of money was adjudged by said decree to be a first lien on said described real estate as against all persons having an interest therein, and that, in default of such payment, said described lands to be sold by the party of the first part (who was herein appointed Commissioner of said Court for that purpose) at public outcry, to the highest bidder, for cash in hand, at the front door of the court house of Crittenden County, within legal hours, June 14th. 1898, after giving notice of the time, terms and place of sale, by publishing such notice in some newspaper of general circulation published in said Crittendent County, weekly, consecutively for two weeks; and if

all of said lands were not sold on said day, the sale to be continued from day to day till completed; and whereas, the said sum of money, penalty, interest and costs as aforesaid, being and remaining wholly unpaid, said party of the first part, as such Commissioner, in pursuance of the orders and directions contained in said decree, gave notice of the time, place and terms of sale of said lands, by publication thereof in the Marion Reform, a weekly newspaper of general *bona fide* circulation, published in Crittenden County, for two weekly insertions consecutively, and did proceed on said day as advertised, between nine o'clock A. M., and three o'clock P. M. and offered said lands for sale at public outcry, to the highest bidder, at the front door of the courthouse of said Crittenden County, and at such sale so made and had the said party of the second part bid and offered for said lands the sum of Sixty One and 21/100 Dollars, and he being the highest and last bidder, the same was then and there publicly struck off and sold to A. Hackler for that sum; and whereas, the said sale was duly reported at the July 1898 term of said Court, and duly approved, and the undersigned Commissioner directed to make a deed to the purchaser.

Now, therefore, This indenture witnesseth, that the said J. T. Haden, as Commissioner in Chancery aforesaid, and party of the first part to these presents, in order to carry into effect the sale made as aforesaid, in pursuance of the decree of said Chancery Court, in consideration of the premises and the sum of Sixty One and 21/100 Dollars, hath granted, bargained and sold, and by these presents does grant, bargain, sell and convey unto the said A. Hackler as party of the second part hereto, and to her heirs and assigns forever, all the right, title, interest or claim, either in law or in equity, of the parties to said suit in Chancery, and of all other persons or claimants having an interest in or to said lands described as aforesaid, and all and singular the rights and privileges, hereditaments and appurtenances thereunto belonging or in anywise appertain-
54 ing.

To have and to hold said lands, with all appurtenances thereto, unto the party of the second part and her heirs and assigns forever.

In witness whereof, The party of the first part hereunto sets his hand and affixes his seal as such Commissioner in Chancery, on the day first above written.

J. T. HADEN,
Commissioner in Chancery.

Examined and approved in open Court this 16th. day of January 1899.

E. D. ROBERTSON, *Chancellor.*

Acknowledgment.

STATE OF ARKANSAS, *County of Crittenden:*

In the Crittenden Chancery Court, at the January, 1898, Term Thereof, 16th Day of January, 1899.

In Chancery. # 589.

BOARD OF DIRECTORS OF ST. FRANCIS LEVEE DISTRICT
vs.
THE MEMPHIS LAND AND TIMBER CO. ET AL.

On this day, J. T. Haden, the Commissioner appointed to execute the decree rendered in this cause, produces to the Court here his deed to A. Hackler, the purchaser of part of the lands and premises mentioned and described in said decree, and upon examination of said deed the same is, in all things, approved. And thereupon the said J. T. Haden, here in open Court, acknowledges that he has executed said deed to said A. Hackler for the lands and premises therein described, to wit:

N. E. ¼ Sec. 31 T. 4 N. R. 7 E. 166 acres,
N. ½ Sec. 21 T. 3 N. R. 7 E. 220 acres,
N. W. ½ Sec. 29 T. 4 N. R. 7 E. 160 acres,
S. W. ¼ Sec. 30 T. 4 N. R. 7 E. 160 acres,

for the consideration and purposes therein mentioned and set forth; and it is ordered by the Court that a copy of this order and acknowledgement be entered upon said deed, and certified by the Clerk under the seal of this Court, to the end that same may be entitled to record.

In testimony that the above and foregoing order and acknowledgement is a true and complete copy from the record of the proceeding of the Chancery Court of Crittenden County, I, J. T. Haden, do hereby set my hand as Clerk and affix the seal of said Court, at my office, in said County, this 16th. day of January, 1899.

J. T. HADEN, *Clerk.*

Certificate of Record.

STATE OF ARKANSAS, *County of Crittenden:*

I, J. T. Haden Circuit Clerk and Ex-Officio Recorder of the County aforesaid do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 16th. day of January 1899 at 3 o'clock P. M. and the same is now duly recorded with the acknowledgement and certificates thereon in Record Book L "2" on page 1.

In witness whereof I have hereunto set my hand and affixed the seal of said Court this 16th. day of March 1899.

[SEAL.]

J. T. HADEN,
Circuit Clerk and Ex-officio Recorder,
By R. F. WARD, *D. C.*

55 *Order Submission.*

Crittenden County Chancery Court, Record "H."

September Term, 1900, Page 153.

BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT
vs.
THE MEMPHIS LAND AND TIMBER CO. ET ALS.

In the matter of controversy between Richard H. Allen, John Fritz and others on the one side and C. W. Hunter and others and in the matter of controversy between A. B. Ballard and Josephine W. Ballard on the one side and C. W. Hunter and A. Hackler and J. P. Hackler on the other.

The above cause as to the said matters in controversy between the said parties is this day heard by the Court and after having been argued by the counsel of the respective parties the same are taken under advisement by the Court. This order was made on the 26th day of September 1900, the third day of this Term and is now entered for then.

56 *Answer, Motion, and Bill of Review of R. H. Allen et al.*

In the Chancery Court of Crittenden County, Arkansas.

Equity Docket, #589.

BOARD OF DIRECTORS OF THE ST. FRANCIS LEVEE DISTRICT
vs.
MEMPHIS LAND AND TIMBER COMPANY AND OTHERS.

For the Collection of Levee Taxes for the Year 1897.

To the Hon. E. D. Robertson, Chancellor:

The answer and motion and petition and bill of review of Richard H. Allen, Harry Allen, Mary L. Latham, and John C. Latham her husband, Ellen Allan, Thos. H. Allen, Jr., a minor by his next friend and guardian *ad litem*, Floy G. Allen, John C. Latham in his own right, John B. Leach, John Fritz, The Phœnix Fire & Marine Insurance Co., the Memphis Savings Bank, both corporations of the State of Tennessee, the City National Bank, a national bank under the act of Congress, located at Cairo, Illinois, and C. W. Edmonds, as Successor of Albert G. Mitchell, deceased, and as assignee of the Hill Shoe Co., also a corporation of the State of Tennessee.

The lands hereinafter described are in litigation in the suits hereinafter referred to, as will more fully appear by the records of the

said suits respectively, to which reference is now here made, as a part of this answer, motion, petition and bill. Nothing herein contained *shall effect or impair or in any way prejudice the rights of the* parties thereto, nor any of them, as amongst themselves, or against each other, with respect to the said lands, or any part of them, or any right thereto, or claim or interest therein, but the same shall remain as if this answer, motion, petition and bill, had not been filed.

57 (1.)

The above named parties state and show to the court that prior to March 27th, 1889, Thos. H. Allen, now deceased, was the owner in fee and in possession of the following described lands, in Crittenden County, Arkansas, to wit:—The east fractional 1/2 of Section Fifteen (15) South half of section 10; the N. W. 1/4 of section 10, all of section 9, the west 1/2 of Section 4, and the Southeast 1/4 of Section 4, the West half of the N. E. 1/4 of Section 4, and the West 1/2 of the S. W. 1/4 of Section 3, all in township 3 North, Range 7 East, and containing together about 2080 acres of land. Being so the owner of the said lands, and so in possession of them, the said Thos. H. Allen on March 27th, 1889, aforesaid, by a title bond of that date, afterwards duly acknowledged and prescribed by law on February 1st, 1893, and of record in the office of the recorder of Crittenden County in Book G, Vol. 2 p. 109, to which reference is here made, bargained and sold to John Fritz of the County of Crittenden the said above described tracts of land, and each and all of them. For the said land the said John Fritz agreed to pay Thos. H. Allen $18,720.00 evidenced by promissory notes described in the said title bond.

It was also agreed in the said title bond that when the said John Fritz should pay all the said notes the said Thos. H. Allen or his heirs and representatives should make or cause to be made to the said Fritz a good and warranty deed to the said described lands or to his executor or administrator. The said Thos. H. Allen thereupon put the said John Fritz into the actual possession of all the said lands, and the said John Fritz by virtue of his interest and title under the said title bond has remained the owner and in possession of the said lands, ever since the said March 27th, 1889.

The said Thos. H. Allen afterwards died intesta e a resident and citizen of the State of Tennessee, leaving his surviving as his heirs at law, Richard H. Allen, Thos. H. Allen Jr., citizens and
58 residents of the State of Tennessee, and Harry Allen, a citizen and resident of the State of Louisiana, and Mary L. Latham wife of John C. Latham a resident and citizen of the State of New York and Mrs. Ellen Allen his widow a resident and citizen of the State of Tennessee. Since the death of Thos. H. Allen, the said Thos. H. Allen Jr., has departed life intestate leaving as his heirs at law his son Richard H. Allen Jr., and also his widow Floy G. Allen, residents and citizens of the State of Tennessee. The said Richard H. Allen is a minor under the age of 21 years. The other parties are all adults. All of them are named above as parties hereto.

(2.)

After the said title bond had been so executed by the said Thos. H. Allen, and after the said notes had been so executed and delivered to him by the said John Fritz, as stated in the said title bond, John B. Leach became the holder of the following described of the said notes to wit:—One due November 1st, 1892, for $4000.00, one due November 1st, 1893 for $5000.00, both bearing interest at 6% per annum from maturity.

On April 10th, 1893, the said John B. Leach filed his complaint in equity in the Circuit Court of Crittenden County for the purpose of recovering the amount of the said two notes, and of enforcing the lien resulting from the said title bond on the said land described above, and thereby to compel the payment of the said notes. He made among other parties John C. Latham one of the parties hereto a defendant. The defendant to the said suit appeared therein and filed answers to the said complaint, and the said suit is yet pending in court here, and to the record of the same the parties hereinbefore named here refer for particularity and certainty.

By Virtue of the said suit and the holding of the said title bond, the said John D. Leach claimed a lien upon and interest in the said lands. Since the said suit was begun and while pending the said John D. Leach departed life and has qualified —— —— as his administrator, and the same has been revised in his name as
59 such administrator. The said —— —— as such administrator now claims the same lien on and interest in the said lands as those claimed by the said John D. Leach as above stated. He also makes himself a party hereto.

(3.)

The said John C. Latham made a defendant in the said suit last stated brought by John D. Leach appeared therein and filed his answer and cross complaint on July 8th, 1893. In his said answer and cross complaint he set up the title bond aforesaid so executed by the said Thos. H. Allen to the said John Fritz, and claimed and stated that he was the owner of the following described notes mentioned in the said title bond, to wit:—

One	due	November	1st,	1890,	for	$1000.00
"	"	"	"	1891,	"	2000.00
"	"	"	"	1894,	"	6720.00
"	"	"	"	1890,	"	6720.00
"	"	"	"	1890,	"	1815.84
"	"	"	"	1891,	"	1063.20
"	"	"	"	1892,	"	943.20
"	"	"	"	1893,	"	703.20
"	"	"	"	1894,	"	403.20

In his said cross complaint he claimed the right to enforce the payment of the said notes, and to foreclose the lien resulting from the said title bond upon the said above described land for the payment thereof. The said cross complaint in the said suit remains un-

disposed of and is yet pending. In consequence of the said title bond and the holding of the said notes, and the said suit the said John C. Latham claims he has a lien upon and interest in the said described land, to wit, that mentioned above.

(4.)

On June 30th, 1892, the Phœnix Fire & Marine Insurance Co. of the State of Tennessee, filed its complaint at law in the Circuit Court of Crittenden County against the said Thos. H. Allen, Thos. H. Allen Jr., Richard H. Allen and Harry Allen, partners *of* Thos. H. Allen & Co. they all being non-residents of the State of Arkansas. In the said complaint the said Company claimed the right to recover a large amount of debt owing it by the said Thos. H. Allen and Co. composed as aforesaid. On the said day an order of attach-
60 ment was issued in the said suit and delivered to the Sheriff of Crittenden County, and the same was afterwards levied by him upon the said above described tracts of land and each of them, as the property of the said Thos. H. Allen.

The said defendants in the said suit were given notice according to law of the pendency thereof, but failed to appear therein, and judgment was pronounced against them for the debt claimed by the said Phœnix Fire & Marine Insurance Co., in the said Crittenden Circuit Court, and the said above described property, so attached, was condemned for sale under the said attachment and ordered to be sold to satisfy and pay the debt sued for, which was therein adjudged to be due the said Phœnix Fire & Marine Insurance Co. from the said Thos. H. Allen & Co. An order of sale was ordered to issue upon the said judgment for the sale of the said property so attached and ordered to be sold. But by an injunction issued in a suit brought in the Circuit Court of Jefferson County in the State of Arkansas, and removed therefrom under the act of Congress to the Circuit Court of the United States for the Eastern District of Arkansas sitting at Little Rock, wherein Nellie Houchens was plaintiff and Thos. H. Allen and others were defendants, the said Phœnix Fire & Marine Insurance Co. the plaintiff in the said suit, and the Sheriff of Crittenden County having the execution of the said order of sale were enjoined from executing the said order, or making the said sale and the said injunction has always since continued in force and is yet in force, and the said matter is being litigated between the said parties to the said suit in the Circuit Court of the United States where the suit is yet pending. To the record and proceedings in the said suit in the said Circuit Court of Crittenden County so brought by the Phœnix Fire & Marine Insurance Co. reference is here now made for particularity and certainty, and the same is asked to be taken and considered a part thereof. By virtue
61 of the said proceedings the said Phœnix Fire & Marine Insurance Co. has and claims an existing lien on the said lands before described.

(5.)

On the same June 30th, 1892, the Memphis Savings Bank, a corporation of the State of Tennessee filed its complaint at law in the

Circuit Court of Crittenden County against the said Thos. H. Allen Jr. Richard H. Allen and Harry Allen, partners as Thos. H. Allen & Co., all being non-residents of the State of Arkansas. In the said complaint the said Memphis Savings Bank claimed the right to recover a large amount of debt owing it by the said Thos. H. Allen & Co., composed as aforesaid. On the said date an attachment was issued in the said suit and delivered to the sheriff of Crittenden County and the same was afterwards levied by him upon the said above described land, to wit, all hereinbefore mentioned. The said defendants in the said suit were given notice according to law of the pendency thereof but failed to appear therein, and judgment was pronounced against them for the debt claimed by the said Memphis Savings Bank in the said Crittenden Circuit Court and the said property so attached, to wit, all before described was condemned for sale under the said attachment, and ordered to be sold to satisfy the debt sued for, which was therein adjudged to be due the said plaintiff, the Memphis Savings Bank from the said Thos. H. Allen & Co.

An order of sale was ordered to issue upon the said judgment for the sale of the said property so attached, and so ordered to be sold. But an injunction was issued in a suit brought in the Circuit Court of Jefferson County, Ark., and removed therefrom under the Act of Congress to the Circuit Court of the United States for the Eastern District of Arkansas sitting at Little Rock wherein Nellie Houchens was plaintiff and Thos. H. Allen & Co. and others were defendants. The said Memphis Savings Bank the plaintiff in the said suit and the Sheriff of Crittenden County having the execution
62 of the said order of sale were enjoined from executing the said order or making the said sale, and the said injunction has always since continued in force, and is yet in force, and the said matter is being litigated between the said parties in the said Circuit Court of the United States where the suit is still pending. To the record and proceedings in Crittenden Circuit Court wherein the said property was attached and the said order of sale rendered, remaining of record there, the parties hereto here refer for particularity and certainty and pray that the same may be taken and considered as a part hereto. By virtue of the said proceedings the said Memphis Savings Bank has and claims a lien on the said land now existing.

(6.)

On August 6th, 1892, the City National Bank of Cairo, Ill., a national bank organized under the Act of Congress in that behalf and located at Cairo in the State of Illinois, filed its complaint at law in the Circuit Court of Crittenden County against the said Thos. H. Allen, Thos. H. Allen Jr., Richard H. Allen and Harry Allen, partners as Thos. H. Allen & Co., they all being non-residents of the State of Arkansas. In the said complaint the said City National Bank claimed the right to recover a large amount of debt owing to it by Thos. H. Allen & Co. composed as aforesaid.

On the said day an order of attachment was issued in the said suit and delivered to the Sheriff of Crittenden County and the same

was afterwards, to wit, on August 29th, 1892, levied by him upon the said above described land as the property of the said Thos. H. Allen. The said defendants in the said suit were given notice according to law of the pendency thereof, but failed to appear therein and judgment was pronounced against them for the debt claimed by the plaintiff the said City National Bank in the said Crit-
63 tenden Circuit Court and the said property so attached, to wit, all before described was condemned for sale under the said attachment and ordered to be sold to satisfy and pay the debt sued for, which was therein adjudged to be due to the said plaintiff the City National Bank from the said Thos. H. Allen & Co.

An order of sale was ordered issued upon the said judgment for the sale of the said property so attached and ordered to be sold, to wit, all before described, but by an injunction issued in a suit brought in the Circuit Court of Jefferson County, Arkansas, and removed therefrom under the Act of Congress to the Circuit Court of the United States for the Eastern District of Arkansas sitting at Little Rock wherein Nellie Houchens was plaintiff and Thos. H. Allen and others were defendants, the said City National Bank of Cairo, the plaintiff in the said suit, and the Sheriff of Crittenden County having the execution of the said order of sale, were enjoined from executing the said order, or making the said sale, and the said injunction has always continued in force and is yet in force and the said matter is being litigated between the said parties in the Circuit Court of the United States aforesaid, where the suit is pending. To the record and proceedings of the said suit so remaining in the said Crittenden Circuit Court wherein the said property was attached and ordered to be sold, as aforesaid, reference is now here made for particularity and certainty, and the same is asked to be taken and considered as a part hereof. By virtue of the said proceedings in the said Crittenden Circuit Court the said City National Bank of Cairo has an existing claim and lien upon the said lands before described.

(7.)

On August 16th, 1892, A. G. Mitchell as assignee of the Hill Shoe Company, a corporation of the State of Tennessee, filed his com-
plaint at law in the Circuit Court of Crittenden County
64 against Thos. H. Allen, Thos. H. Allen Jr., Richard H. Allen and Harry Allen partners, as Thos. H. Allen & Company, they all being non-residents of the State of Arkansas. In the said complaint the said Mitchell as such assignee claimed the right to recover a large amount of debt owing him as such assignee by the said Thos. H. Allen & Company, composed as aforesaid.

On the said day an order of attachment was issued in the said suit and delivered to the Sheriff of Crittenden County and the same was afterwards, to wit, on August 28th, 1892, levied by him upon the said above described lands as the property of the said Thos. H. Allen. The said defendants in the said suit were given notice according to law of the pendency thereof, but failed to appear therein and judgment was pronounced against them for the debt claimed

by the said Mitchell as such assignee in the said Crittenden Circuit Court and the said property so attached, to wit, that before described, was condemned for sale under the said judgment and was ordered to be sold to satisfy the debt sued for which was therein adjudged to be due the said plaintiff Mitchell as such assignee for the said Thos. H. Allen & Co.

An order of sale was ordered to issue from the said judgment for the sale of the said property so attached, and ordered to be sold. But an injunction issued in the suit brought in the Circuit Court of Jefferson County, Arkansas, and removed therefrom under the Act of Congress to the Circuit Court of the United States for the Eastern District of Arkansas sitting at Little Rock, wherein Nellie Houchens was plaintiff and Thos. H. Allen and others were defendants, the said Mitchell as such assignee, the plaintiff in the said suit and the Sheriff of Crittenden County, having the execution of the said order of sale, were enjoined from executing the said order or making the said sale, and the said injunction has always since continued in force and is yet in force, and the said matter is
65 being litigated between the parties in the said Circuit Court of the United States where the suit is still pending. To the record and proceedings in the said suit so remaining in the Crittenden Circuit Court reference is now here made for particularity and certainty, and the same is asked to be taken and considered as a part of this petition. Since the judgment and order of sale was so pronounced in the said Circuit Court of Crittenden County the said Mitchell has departed life, and C. W. Edmonds, named above, has been appointed and has become his successor as assignee of the Hill Shoe Company, and as such is entitled to the benefit of the said judgment and order of sale. By virtue of the said proceedings and the said facts said C. W. Edmonds as such assignee of the Hill Shoe Company has an existing claim and lien on the said above described lands.

(8.)

The title to the following of the above described tracts of land was vested, and circumstanced and situated and encumbered as has been hereinbefore stated, to wit, the W. ½ of the S. W. ¼ of Section 3, the W. ½ of the S. E. ¼ of Section 4, the W. ½ of Section 4, and Section 9, all in Township 3 North, Range 7 East on December 21st, 1897, when the suit was begun in this court styled the Board of Directors of the St. Francis Levee District *vs.* The Memphis Land and Timber Co. and others, being the same suit in the caption of this pleading mentioned. The parties named above and presenting this pleading were not made parties by name to the said suit and they have never heretofore appeared therein. They had no knowledge or notice of the commencement or the pendency of the said suit with respect to the said lands above described until after the proceedings hereinafter to be stated had been had. All the said parties during the said time except John Fritz, named above, were
66 and are yet not citizens of the State of Arkansas, and did not and do not reside therein, and reside outside its limits. The said John Fritz was during all the said time and yet is a citizen of Crittenden County residing therein.

(9.)

The said parties above named and each of them claim they were never legally or properly brought before the Court by any lawful warning order, or other publication, or by constructive service of process in the said suit, nor have they or either of them had such notice of the said suit, or the pendency thereof, as binds or concludes them, or either of them, by the proceedings and decrees therein, or any such notice as in any way affects or impairs their title to the tracts of land aforesaid, hereinbefore described, by the sale thereunder, and the proceedings with respect thereto, hereinafter to be stated.

(10.)

No sufficient affidavit of the plaintiff herein was filed in the Clerk's office of the said Court at or after the commencement of the said suit stating positively or sufficiently any one of the facts required by the statute Sandels & Hill's Digest, Section 5679, or any other statute, applicable in the premises, authorizing the Clerk of this Court to make any order upon the complaint herein, or otherwise, warning the said above named parties, or either of them, to appear in the said suit as required by law.

The Clerk of the said Court did not make upon the complaint in the said cause, or otherwise, any such order warning the said above named parties, or either of them to appear in the said suit, as required or obliged them to appear therein, or bound them by the proceedings which have been had therein. No such publication was ever made of any such warning order, made in the said suit, as required or obliged the said above named parties, or any or either of them, to appear in the said suit, or has had the effect of binding them by the proceedings which have been had therein. No such proof has been made in the said suit of the publication of any warning order therein, as has established the fact that any sufficient warning order has been properly and sufficiently published, or as conferred upon the said Court, or this Court jurisdiction of the said above named parties, personally, or any or either of them, with respect to the said tracts of land, before described, or either of them. The said above named parties each and all here positively deny that they or either of them, or the lands before described, or any part thereof, have ever been brought before the said Court, or this Court, or within its jurisdiction, or that it has ever had any power to decree the sale of the said lands, or any of them, or pass the title thereto.

67

(11.)

The said above named parties presenting this pleading were not, nor was either of them stated in the complaint in the above styled suit to be owners of the said tracts of land, or of any or either of them, nor were they or either of them stated to be the persons who claimed to be the owners of the said tracts of land. The evidence of the title of the said above named parties, and each of them, to the tracts of land, and each of them, appeared of record, as afore-

said, in the office of the Recorder of Crittenden County, and also of record in the said several suits in the said Circuit Court of Crittenden County, and in this Court as before stated herein.

The ownership of the said tracts of land, and each and every tract thereof, was therefore known to the plaintiff in the above styled suit, the Board of Directors of the St. Francis Levee District, and it has never been alleged in the said complaint in the said suit, or elsewhere in the said suit, that the ownership of the said tract of land was unknown to the plaintiff in the said suit, the Board of Directors of the St. Francis Levee District. And the said tracts of land have never been proceeded against in the said suit as being owned by unknown owners. And no notice has ever been given in the said suit by publication or otherwise as to the said tracts of land or either of them, to be unknown owners thereof. Nor has it ever been
68 alleged in any such notice nor in the complaint in the said suit, as before stated, nor in any other pleading in the said suit, that the owners of the said tracts of land, or either of them were unknown to the plaintiff in the said suit, the Board of Directors of the St. Francis Levee District. And no notice of the pendency of the suit as against non-residents of the County of Crittenden and unknown owners respectively with reference to the said tracts of land when the said suit was pending has ever been given by publication weekly for four weeks prior to the first day of a term of the said Court or prior to the day thereof on which the final judgment herein complained of for the sale of the said land was entered. And so the above named parties here presenting this pleading, and each of them, say that the judgment or decree hereinbefore stated and here complained of was rendered or pronounced without notice to the said above named parties or either of them actually or constructively, and that the same and the proceedings therein have always been and are absolutely null and void.

(12.)

The judgment or decree of this court in the said suit on February 16th, 1898, found and decreed that the W. ½ of the S. W. ¼ of Section 3, mentioned above, was indebted to the plaintiff in the said suit for certain Levee Taxes therein mentioned in the sum of $— as more fully appears by the said judgment or decree. It also found and adjudged that the W. ½ of the S. E. ¼ of Section 4, mentioned above, was indebted to the plaintiff in the said suit for certain levee taxes therein mentioned in the sum of $— as more fully appears by the said judgment or decree. It also found and adjudged that the W. ½ of Section 4 mentioned above was indebted to the plaintiff in the said suit for certain levee taxes for the years mentioned therein in the sum of $— as more fully appears by the said judgment or decree. It also found and adjudged that Section 9 mentioned
69 above was indebted to the plaintiff in the said suit for certain Levee taxes mentioned therein for the sum of $— as more fully appears by the said judgment or decree.

The parties above named claim and insist that the said judgment or decree and the sale thereunder, hereafter to be stated, were and are now void for the reason hereinbefore stated, and the reasons herein-

after to be stated. The said judgment or decree of February 16th, 1898, adjudged and decreed that the four tracts of land herein last described, to wit, the W. ½ of the S. W. ¼ of Section 3, the W. ½ of the S. E. ¼ of Section 4, the W. ½ of Section 4, Section 9, Township 3 North, Range 7 East, were indebted, in the manner before stated, to the plaintiff herein, the Board of Directors of the St. Francis Levee District, in the sums above stated, and that the same constituted a lien on the said tracts of land respectively, and that the Clerk of this Court, who was appointed Commissioner for the purpose, sell the said lands respectively, to the highest bidder for cash, having first advertised the said lands for sale in some newspaper for two weeks weekly, and that he execute a deed of conveyance to the purchaser thereof, and receive therefor a fee of $1.00. It is further decreed that there should be allowed the said Commissioner fees as follows; For furnishing the printer with a list of the lands to be advertised 5¢ per tract, for attending, reporting and making the sale 25¢ per tract. And that there should be allowed to the printer for publishing the said notices 50¢ per tract, which fees should be taxed as costs against the said several tracts of land, to be paid by the purchaser, or person discharging the lien before the sale. The parties hereto, named above, submit that the said provisions and requirements of the said decree were unauthorized and rendered the same void. The said judgment or decree then further required the Commissioner appointed to make the sale to report his proceedings thereunder to the Court at the next term.

(13.)

J. T. Haden the Clerk of the Court, appointed Commissioner as before stated, filed his report of the sale made by him under the said decree, on July 20th 1898, as more fully appears of record in Court here. In the said report he stated that he had sold the W. ½ of the S. W. ¼ of Section 3, 80 acres, for the sum of $5.80 to C. W. Hunter. That he had sold the W. ½ of the S. E. ¼ of Section 4, containing 80 acres, to the said C. W. Hunter for $5.80. That he had sold the W. ½ of Section 4, 320 acres, to the said C. W. Hunter for $200.50, and that he had sold all of section 9 for the sum of $360.00 to the said C. W. Hunter.

The said report of sale, as the parties hereto have been informed and believe and state, has been confirmed by decree of the Court, rendered at its last term, but for certainty they here refer to the record remaining in Court, as they have no knowledge on the subject. They state upon information and belief that the said J. T. Haden as such Commissioner has executed a deed or deeds to the said Hunter as the purchaser of the said tracts of land purporting to convey him the same under the sales and purchases. The said deed or deeds as the parties are informed and believe and state, are of record in the office of the Recorder of Crittenden County in Book — p. — to which they here refer as a part of this pleading. But upon information and belief they state and show that such deed or deeds have not yet been approved or confirmed by the Court here.

The said above named parties hereto claim and insist for the reasons before stated and the reasons hereinafter to be stated that the said purchases were and are absolutely void. They state further that they had no notice of the pendency of this suit, nor of the
71 said sales before stated, nor of the confirmation thereof until after the said confirmation had taken place, and was completed. They have therefore had no opportunity to appear in this suit, nor to object to the said report of sale since they received notice of the said suit until the present time which is their first opportunity. They bring into Court here and offer to pay the Court, or as the Court may order, such sums as are or may be required to redeem the said lands from the said sales and purchases, and pray the Court here to fix the amount to be brought in and paid.

(14.)

The said above named parties further state and show that the recitals in the decree or judgment of sale in the said suit of February 16th. 1898, before referred to that they or either of them by name or description or as unknown owners of the tracts of land before described or any or either of them or any tract of land proceeded against in this suit had been severally constructively summoned to appear in the said suit by publication in a newspaper publis-ed in Crittenden County, Arkansas, weekly for four weeks before the said judgment or decree or that proof of such fact had been previously filed in the said suit, or this suit, was and is entirely untrue. The said parties deny the said allegations or statement. They here take issue thereon and ask leave of the Court to contest the truth thereof, and to produce evidence and make proof on the subject to the contrary.

And the said parties further state and show that nothing in the complaint in the said suit or the complaint herein when taken as confessed as the judgment or decree recites it was, authorized or justified the said decree of sale against the said above named parties or either of them or against or with respect to the said tracts of land or either of them.

No testimony was introduced in the said suit as to the liability of the said above named parties or either of them, or of the said tracts of land or either of them for the said sums so adjudged
72 or decreed against them respectively as before stated. And the said Circuit Court and this Court were not authorized to award or decree *pro confesso* against the said above-named parties or either of them or as to the said tracts of land or either of them in favor of the plaintiff here, the Board of Directors of the St. Francis Levee District, for the amounts of the taxes, interest, penalties and cost claimed to be due and found and decreed to be due therefrom, or thereon, as more fully appears by the said judgment or decree which is now here again referred to.

And for the reasons before started and reasons herein stated and reasons hereinafter to be stated the above named parties insist that the said judgment or decree as to them and each of them and the said above mentioned tracts of land and each of them is without authority and absolutely void.

(15.)

And the said above named parties particularly attack and deny the validity of the following named provisions of the statute on which the said suit herein is based, and on which the judgment and decree aforesaid and the sale hereunder, are rested, to wit:— Those provisions of Act No. 71 of the Acts of the General Asembly of the year 1895, approved on April 2nd., 1895, which declare: That notice of the pendency of such suit shall be given as against nonresidents of the County and unknown owners respectively, when such suits may be pending, by the publication weekly for four weeks prior to the day of the term of the Court on which judgment may be entered for the sale of the said land in some newspaper published in the county where such suit may be pending, and then gives the form of the notice, and then provides that there shall follow in the notice a list of the supposed owners, with a descriptive list of the delinquent lands, and the amounts due thereon respectively, and the conclusion to such notice.

And those declaring: that as against any defendant who resides in the county where such suit may be brought, and who appears by the record of deeds in said County to be the owner of any lands pro-
73 ceeded against, notice of the pending suit shall be given by the service of personal summons of the Court, at least twenty days before the day on which the said defendant is required to answer as set out in the summons, and that actual service of summons shall be had where the defendant is in the County, or where there is an occupant upon the land. And that the said suit shall stand for trial at the first term of the Court after complaint may be filed, if such four weeks in the case of a non-resident or unknown owner as aforesaid of the said twenty days in the case of a resident defendant as aforesaid shall expire, either before the first day of the term of the Court in which said suits are brought respectively, unless a continuance is granted for good cause shown, within the discretion of the Court. And that in all cases where notice has been filed or if filed and the cause decided for the plaintiff, the Court by its decree shall grant the relief as prayed in the complaint, and shall direct the said commissioner to sell the land as described in the decree at the Court House door of the County wherein the decree is entered at public out cry to the highest bidder for cash in hand, after first having advertised such sale weekly for two weeks consecutively in some newspaper published in the County, or otherwise, as prescribed. And that the said Commissioner shall by proper deeds convey to the purchasers the lands so sold and that the title to the said lands shall thereupon become vested in such purchaser as against all others whomsoever saving to infants and insane persons the rights given them by Section 12 of the Act of February 15th. 1893

And that said suit shall be conducted in accordance with the practice and proceedings of Chancery Courts in this State, except as in the Act, is otherwise provided: Except that neither attorneys nor guardians *ad litem*, nor any provision of Section 5877 of Sandels & Hill's Digest of the statutes of Arkansas shall be required, and

except that said suits may be disposed of on oral testimony as
74 in ordinary suits at law. And that this law shall be liberally construed to give said assessment lists the effect of *bona fide* mortgages for a valuable consideration, and a first lien upon the said land as against all persons having an interest therein. And that no informality or irregularity in holding the meetings, or in the description or valuation of the lands or in the names of the owners or the number of therein shall be a valid defense to such action.

So far as the said provisions affect the rights of the said above named parties or either of them to the said tracts of land aforesaid and each of them or their rights in this suit the validity of the same is denied. It is claimed that they and each of them are unconstitutional and void so far as they effect or impair such rights. And it is also claimed that the acts done under them respectively are void.

The said provisions of the said act, and the said proceedings thereunder violate Section 8, Article 2 of the Constitution of the State of Arkansas, providing that no persons shall be deprived of life or liberty or property without due process of law. They also violate that provision of Section 18, Article 2, which provides that the General Assembly shall not grant to any citizen or class of citizens privileges and immunities which upon the same terms shall not equally belong to all other citizens.

They also violate that provision of Section 21, Article 2 of the said Constitution which provides that no person shall be desoized of his estate, freehold, liberties, or privileges, or in any manner deprived of his property, except by the judgment of his peers or the laws of the land.

They also violate that provision of Section 25, Article 5 of the said Constitution which provides that in all cases where a general law can be made applicable no special law shall be enacted, nor shall a portion of any general law be suspended by the Legislature
75 for the benefit of any particular individual, corporation or Association, nor where the Courts have jurisdiction to grant the powers or the privileges, or the relief asked for.

They also violate Clause 1, Section 2, Article 4, of the Constitution of the United States, which declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several states.

They also violate that privilege of the 14th Amendment to the Constitution of the United States which declares that no State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

For the reason that the said legislation and the said portions of the said judgment or decree of the said Circuit Court and this Court, and the proceedings thereunder hereinbefore stated, including the sales of the said tracts of land are in conflict with the State Constitution and the Constitution of the United States in the particulars stated, and are therefore void, and said above named parties and each

of them claim and insist that the said judgment or decree and the sales made thereunder, and the report of sale, and the confirmation thereof, and any and all deeds which have been made by the Commissioner under and in pursuance thereof are null and void, and should be set aside.

(16.)

The above named parties further state and show that about May 17th., 1899, the plaintiff the Board of Directors of the St. Francis Levee District by a deed to be found of record in the office of the recorder of Crittenden County in Book L, Vol. 2 p. 315, through Jno. B. Driver its President undertook to convey to the said above named C. W. Hunter the following described of the tracts of land hereinbefore described, to wit:—the N. W. ¼ of Section 10,
76 the W. ½ of Section 4, the W. ½ of the N. E. ¼ of Section 4, the W. ½ of the S. W. ¼ of Section 3, and an undivided ½ of all section 9, all in Township 3 North, Range 7 East. A copy of the deed will be produced on the hearing, if required as a part hereof. But the said C. W. Hunter is hereby given notice and required to produce the original.

As the parties here are informed and believe and state the said deed was made upon the assumption and claim that all the said tracts of land belonged to the plaintiff here, the Board of Directors of the St. Francis Levee District, under a forfeiture thereof for the nonpayment of the taxes for the year 1893. The said deed claims and asserts that all the said lands were forfeited to the State for that year, and that the same had become the property of the plaintiff here the Board of Directors of the St. Francis Levee District by virtue of such forfeiture and the grant by the State through the several acts of the General Assembly on the subject of the said lands to the said plaintiff the Board of Directors of the St. Francis Levee District. The parties hereto claim and insist that the said deed is absolutely void and that the same conveyed no title whatever to the said C. W. Hunter.

(17.)

The Sale for the Taxes for 1893 Invalid.

The said above named parties say it is true that the said tracts of land just described were assessed for taxation for State and County purposes by the Assessor of Crittenden County for the year 1893, and taxes were levied thereon, and such taxes were not paid by the owners of the said land, and the said tracts of land were returned delinquent by the collector and the Clerk of the Circuit Court caused the said tracts of land to be advertised for sale for the nonpayment of taxes due thereon, and the Collector at the sale bid in the said tracts of land for the State of Arkansas for the said taxes for the year 1893.
77 But the said sale for the said taxes of the said tracts of land respectively were absolutely void, because no notice was attached to the delinquent list of real estate for the year 1893, as required by section 6606 of Sandels & Hill's Digest of the Statutes, and the Clerk of the County Court did not make the certificate at the foot

of the record of the said delinquent list required by the said section of the said Statute. Wherefore, the State acquired no title to the said several tracts of land by its said purchase at the said sale.

It is also true that the General Assembly of the State of Arkansas by the several acts on the subject donated all the lands described as lands belonging to the State within the limits of the St. Francis Levee District to the plaintiff here the Board of Directors of the St. Francis Levee District, or to the said Levee District, but the several tracts of land hereinbefore described and so forfeited to the State of Arkansas at the said sale for the year 1893 and so conveyed as before stated by the Board of Directors of the St. Francis Levee District to the said Hunter were not lands embraced within any of the Acts of the General Assembly, such lands not belonging to the State of Arkansas, and it having no title thereto, and heretofore the parties aforesaid deny that the said Hunter under his said purchase, and the said deed, has ever acquired any title to the said tracts of land or either of them. They claim and insist as aforesaid that the State never had any title to the said tracts of land and that it had not granted any title to the Board of Directors of the St. Francis Levee District, and that the Board of Directors of the St. Francis Levee District could not convey any title to the said Hunter.

78 (19.)

Estoppel by the Sale for Levee Taxes for the Years 1893 and 1894 Respectively.

The parties aforesaid further state and show that the Board of Directors of the St. Francis Levee District, the plaintiff in the suit aforesaid, caused the said tracts of land, to wit, the N. W. 1/4 of Section 10, the W. 1/2 of Section 4, the W. 1/2 of the N. E. 1/4 of Section 4, the W. 1/2 of the S. W. 1/4 of Section 3, and all of section 9, in Township 3 North, Range 7 East to be listed and assessed for taxation for levee taxes in the said County of Crittenden, for each the years 1893 and 1894, as the property of the former owners thereof, and as subject to the payment of such taxes for the said years The said taxes as so assessed and levied for the said years respectively were not paid by the said former owners, and on the — day of 189-, the plaintiff here the Board of Directors of the St. Francis Levee District instituted in the Circuit Court of Crittenden County its suit styled the Board of Directors of the St. Francis Levee District *vs.* W. H. Echols and others, to the record of which said suit reference is now here made. The said suit was brought among other things for the purpose of enforcing the collection of the said levee taxes so assessed and levied upon the above mentioned lands for the said years 1893 and 1894 respectively.

Such proceedings were had in the said suit that a decree was pronounced therein in the said Circuit Court of Crittenden County fixing the amount of the said Levee taxes so due upon the said tracts of land respectively for each of the said years and decreeing the payment of the same. A time was given by the said decree within which to pay such levee taxes, and in default of such payment a Commis-

sioner was thereby appointed to make sales of the said tracts of land respectively after notice and upon terms prescribed in the said decree.

79 The said Levee taxes so decreed to be paid were not paid according to the said decree, and the Commissioner appointed thereby to make sale of the said tracts of land, after having advertised the same as required by the said decree, on July 21st, 1896, sold each and all the said tracts of land at public auction to the highest bidder for cash. And at such sale John Johnson became the purchaser of each and all the said tracts of land for sums of money more than sufficient to pay and discharge all the levee taxes assessed and due thereon. The said Johnson at the said sale complied with the terms thereof and paid the sums bid by him in order to make purchases of the said tracts of land, and the same were received by the Commissioner making the sales, and afterwards paid over to the plaintiff herein, the Board of Directors of the St. Francis Levee District, in discharge of the said Levee taxes so assessed and levied, and decreed to be due on the said several tracts of land for the said years 1893 and 1894 respectively.

Afterwards, and in the course of the said suit of the Board of Directors of the St. Francis Levee District *vs.* W. H. Echols and others, John B. Leech one of the parties hereinbefore named, redeemed the said tracts of land and each of them from said purchases thereof so made by the said John Johnson, and the said John Johnson received the money tendered him in redemption of the said lands so purchased by him at the said sales, and released his claim of title under said purchases respectively, and the said Crittenden Circuit Court by a judgment or decree afterwards pronounced in the said suit ratified and approved and confirmed such redemption, and gave effect thereto. Whereby as the parties aforesaid now claim and insist and state and show the plaintiff here the Board of Directors of the St. Francis Levee District by virtue and in consequence of the assessment and levy of the said Levee taxes for the years 1893 and 1894 respectively on the said tracts of land, and the bringing of the said suit to recover the said taxes, and the judgment and de-

80 cree therein for the recovery of the same and the sale of the said lands for the payment thereof, and the sale of the said lands under the said judgment or decree, and the purchase thereof by the said John Johnson, and the receipts of the amounts due for the levee taxes for the said years 1893 and 1894, out of the purchase money paid in by the said John Johnson, was estopped, before the making of the said deed to the said Hunter, professing and purporting to convey to him the said tracts of land, from setting up or asserting any claim of title to the said tracts of land, or either of them, under the grant to it, the plaintiff here, the Board of Directors of the St. Francis Levee District, by the State of Arkansas, or under forfeiture to, or purchase by the State of Arkansas of the said tracts of land for the taxes for the year 1893 aforesaid, or under any other purchase or sale, or by reason of any other fact, or state of facts.

And the said parties claim and insist that the said estoppel operates upon and against the said C. W. Hunter as completely and effectually

as against the plaintiff here, the Board of Directors of the St. Francis Levee District, and that in consequence thereof the said Hunter has acquired no title by virtue of the said deed, or the conveyance therein, or thereby, to the said tracts of land or either of them, and that his pretended purchase and the said deed and conveyance are void.

(19.)

The said C. W. Hunter named above, the purchaser as before alleged of the said tract of land herein described, is a non-resident of the State of Arkansas and resides in the State of Tennessee.

He is not in the actual possession or occupation of any or either of the said above described tracts of land.

Prayer.

In consideration of the premises, the above named parties pray that the foregoing may be taken and considered and have the
81 effect of their answer to the original bill of complaint herein, and of their motion based thereon, as provided by the Statute, Sandels & Hills' Digest of the Statutes of the State of Arkansas, Section 5882. They also pray that if the same is necessary to their relief the foregoing pleading be taken and considered as their petition, under Sections 5839-5843 of Sandels & Hill's Digest. They pray also that if necessary to their relief the said pleading may be taken and considered as an original complaint, and ordered to be filed and to stand and proceed as such under Sections 4197-4199 of Sandels & Hill's Digest, and under Sections 6120-6124 of the same, and the amendments thereto.

They pray also that if necessary to their relief the said pleading may be taken and considered as a bill of review of the decrees and proceedings in the above styled suit of the Board of Directors of the St. Francis Levee District *vs.* the Memphis Land & Timber Co. and others, Equity docket #589.

They further pray that all the parties to the said suit in which the said judgment or decree has been rendered, and in which the said proceedings thereunder have been so had, including the plaintiff, the Board of Directors of the St. Francis Levee District, and the said C. W. Hunter, the purchaser of the said above described tracts of land, as before stated, may be considered and treated as defendants to this petition, motion and complaint, and as before the Court for all the purposes of the relief herein prayed. Or if necessary they pray that the said C. W. Hunter, the purchaser of the said tracts of land as aforesaid, may be brought before the Court here by the proper service of summons on him personally, or by the proper publication of the necessary warning order in such cases, and made a defendant thereto. That on the final hearing the decree of sale entered in the said above suit above described on the 16th day of February, 1898, and all the subsequent decrees therein affecting the above named parties personally, or the said tracts of land, or

either of them or their interests therein may be reviewed,
82 reversed, vacated, set aside and held for naught.

That the decree hereinbefore stated, entered in the said suit confirming the sale of the said several above mentioned tracts of land to the said C. W. Hunter may be vacated, set aside and held for naught, and that the report of sale, as to the said tracts of land sold to the said Hunter, be set aside, vacated and cancelled, and the sales of the same to the said Hunter be vacated, set aside and held for naught.

That the deeds which have been made as aforesaid by the Commissioner making the sales to the said Hunter, or any one claiming under or through him by assignment, or otherwise, may be cancelled, vacated and held for naught. That the deed mentioned above, made by the Board of Directors of the St. Francis Levee District, through John B. Driver its president, to the said C. W. Hunter conveying or purpo-ting to convey the said above mentioned tracts of land may be cancelled, set aside and held for naught.

That the titles of the parties above named, to the tracts of land before described, may be cleared and quieted and confirmed and declared to be complete and perfect, according to the respective rights of the said parties therein, as the same may be finally determined as between them, as against the proceedings in the said suit, and the said C. W. Hunter, and all the parties thereto. That the parties hereto, above named, may be permitted to pay the taxes justly and legally due to the plaintiff, the Board of Directors of the St. Francis Levee District, on the said tracts of land, including all penalties, interests and costs properly chargeable thereon, and they here bring into Court and offer to deposit or pay, according to the Court's direction, the sum or sums of money requisite for the said purpose. Or if proper, and according to the practice of the Court, and to law, they pray that they may be allowed to redeem the said tracts of land from the said C. W. Hunter by paying him the sums of money to which he is entitled in order to effect such re-
83 demption, and they here offer to bring into Court and offer to pay or deposit, according to the Court's direction, the sum or sums of money necessary to effect such redemption. Or if more appropriate, and according to the law in such cases, the said parties pray that they may be allowed to increase the bids of the said Hunter for the tracts of land bought by him at the sale made to him by the Commissioner as before stated, and they hereby offer to increase such bids of the said Hunter for each of the said tracts of land by the amount of 50% thereof upon each bid respectively, and they here bring into Court and here offer to deposit or pay, according to its direction, the sum or sums of money necessary to make good their respective bids for the said tracts of land as so increased.

And they also pray the proper judgment against the said Hunter and the other adverse parties for costs herein. And they pray for all other just, proper, and necessary relief.

(Signed) RANDOLPH & RANDOLPH,
F. H. HEISKELL,
SMITH & TREZEVANT,
Attorneys for Above Parties.

STATE OF TENNESSEE, *County of Shelby:*

I, John Fritz, named in the foregoing answer, petition and complaint do solemnly swear that the facts therein set forth are true to the best of my knowledge, information and belief.

(Signed) JOHN FRITZ,
Clerk of Circuit Court.

Subscribed and sworn to before me in and for the said County and State on this 25th day of September, 1899.

(Signed) J. T. HADEN, *Clerk,*
By R. F. WARD, *D. C.*

84 Endorsement & File Mark: Equity Docket # 585. Board of Directors of St. Francis Levee District *vs.* Memphis Land and Timber Co. *et al.* Answer, Motion, petition and bill of review of Richard H. Allen and others. Filed September 25th, 1899. J. T. Haden, Clerk, By R. F. Ward, D. C. Randolph & Randolph.

85 *Agreement of Counsel.*

Crittenden County Chancery Court Record "H."

September Term, 1900, Page 136.

BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT
vs.
THE MEMPHIS LAND AND TIMBER CO. ET ALS.

On this day an agreed statement of facts is filed herein.

Crittenden County Chancery Court Record "H."

September Term, 1900, Page 138.

BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT
vs.
THE MEMPHIS LAND AND TIMBER CO. ET ALS.

It is agreed that without any plea by C. W. Hunter to the answer motion, petition or bill of review, or original complaint of Richard H. Allen *et als.* in the above entitled cause that the matter there presented shall be heard as an agreed case upon the agreed statement of facts heretofore filed in this cause and the evidence therein referred to.

RANDOLPH & RANDOLPH,
For RICHARD H. ALLEN ET ALS.
L. P. BERRY,
For C. W. HUNTER.

It is ordered that the above agreement be put of record.

86 *Agreement of Counsel.*

589, Crittenden Chy.

BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT, Plaintiff,
vs.
MEMPHIS LAND & TIMBER COMPANY ET ALS., Defendants.

It is agreed that without any plea by C. W. Hunter to the answer, motion, petition of bill of review or original complaint of Richard H. Allen *et al.* in the above entitled cause that the matters there presented shall be heard as an agreed case, upon the agreed statement of facts heretofore filed in this cause and the evidence therein referred to.

(Signed) RANDOLPH & RANDOLPH,
For RICHARD H. ALLEN ET AL.
L. P. BERRY,
For C. W. HUNTER.

It is ordered that the above agreement be put of record.

87 *Agreed Statements of Facts.*

In the Chancery Court of Crittenden County, Arkansas.

Equity Docket, # 589.

BOARD OF DIRECTORS OF THE ST. FRANCIS LEVEE DISTRICT,
Plaintiffs,
vs.
MEMPHIS LAND & TIMBER COMPANY and Others, Defendants.

For the Collection of Levee Taxes for the Year 1897.

In the matter of the controversy between Richard H. Allen, Harry Allen, Mary L. Latham and John C. Latham, her husband, Ellen H. Allen, Thos. H. Allen, Jr., Floy G. Allen, John C. Latham in his own right, Jno. B. Leech, John Fritz, The Phœnix Fire & Marine Insurance Company, the Memphis Savings Bank, the City National Bank of Cairo, Ill. and C. W. Edmunds, as assignee of the Hill Shoe Co. on the one side, and C. W. Hunter, on the other, arising upon the answer, motion, original complaint and bill of review of the said Richard H. Allen and others, and the answer and reply thereto of the said C. W. Hunter. For the purposes of the trial of the issues between the said parties presented as above, the following state of facts is hereby agreed on, and this agreement is to have the effect of proof duly made upon the said issues and is to be the basis for the decision of the controversy between the said parties.

(1.)

Nothing contained in this agreement shall be taken as agreed to, except for the purposes of the litigation in this suit. None of the parties are to be bound by any statements or admissions of fact herein made, in any other proceeding, or for the purpose of any other suit, either pending or hereafter to be brought. This agreement is not to be used in evidence in any case but this, nor are any facts herein agreed to be used in evidence as agreed facts in any other suit
88 or proceeding against or in favor of any of the parties hereto.

(2.)

It is agreed that on the 27th day of March 1889, Thos. H. Allen was the owner of the following described property situated in Crittenden County, Arkansas, to wit:—The South ½ of Section 10, the Northwest ¼ of Section 10, all of section 9, the West ½ of Sec. 4, the Southeast ¼ of Section 4, the West ½ of the N. E. ¼ of Section 4, and the West ½ of the S. W. ¼ of Section 3, all in Township 3, North Range 7 East, and that his title papers were of record in the office of the Recorder of Crittenden County, Ark.

(3.)

It is further agreed that on the 27th day of March, 1889, Thos. H. Allen by a title bond of that date, afterwards acknowledged and in February 1893 put of record in the office of the Recorder of Crittenden County, Arkansas, Book "G" Vol. 2, Page 109, bargained and sold the said lands and other lands to the defendant John Fritz, as more fully appears by the said title bond.

The said title bond or a true copy thereof is made a part of this agreement for all the purposes thereof, and of the controversy herein, and may be used in evidence, by any of the parties. When the said title bond was made the said Allen as the owner was in possession of the said lands and there was no adverse possessions against him thereof. At that time John Fritz was a resident and citizen of Crittenden County, Arkansas, and has continued to be ever since. He has lived on lands adjoining those above described.

When the said Allen made the said John Fritz the said title bond, he authorized him to take possession of the said lands and to control the same, and the said John Fritz assumed under the said title bond such possession and control. There had been no possession of the said lands adverse to the said John Fritz prior to the 1st day of
89 January 1898, and he was not made a party to this suit nor served with process herein. That there has been at no time an actual occupancy of these lands, except the South half of Section 10 (ten) and the S. E. quarter of Section 4, which Margaret Fritz occupied.

(4.)

It is further agreed that Thos. H. Allen died intestate a resident and citizen of the state of Tennessee, on the 22nd day of October, 1895, and that he left surviving him as his heirs at law Richard H.

Allen, Thos. H. Allen, Jr., both citizens of the State of Tennessee, Harry Allen, a citizen of the State of Louisiana, Mary L. Latham, wife of J. C. Latham, a resident and citizen of the State of New York, and Mrs. Ellen Allen, his widow, a resident and citizen of the State of Tennessee.

It is further agreed that since the death of the said Thos. H. Allen, the said Thos. H. Allen Jr., has departed life, and that he left as his heirs at law his son Richard H. Allen, Jr., and also left his widow, Floy G. Allen, both residents and citizens of the State of Tennessee. The said Richard H. Allen, Jr., is a minor, under the age of 21 years. The other parties are all adults.

(5.)

The record and proceedings in the suit in this Court styled Jno. B. Leech plaintiff *vs.* John Fritz and others defendants, may be used as evidence on hearing of this cause by any of the parties without filing copies of such record, or giving further notice thereof, subject only to objections for irrelevancy and incompetency.

This agreement includes the cross complaint of John C. Latham in the said suit and the answer and pleadings and proceedings with respect thereto, subject to the same reservation. And the notes described in the said complaint and cross complaint may also be used as evidence in this suit for all proper purposes subject to objections for irrelevancy and incompetency, as stated above.

90 (6.)

The record and proceedings in the suit in the Circuit Court of Crittenden County, brought on the 30th. day of June 1892, yet pending there, styled Phœnix Fire & Marine Insurance Co., *vs.* Thos. H. Allen and others, may be used as evidence in this suit, for all the proper purposes thereof, including the pleadings, proceedings, process, returns, orders and judgments, subject to objections for incompetency and irrelevancy, without further notice, and without filing copies of such record in this suit.

(7.)

The record and proceedings in the suit in the Circuit Court of Crittenden County, brought on the 30th. day of June 1892, and yet pending, styled the Memphis Savings Bank *vs.* Thos. H. Allen and others, may be used as evidence in this suit for all proper purposes thereof including the pleadings, proceedings, process, returns, orders and judgments, subject to the objections for incompetency and irrelevancy, without further notice, and without filing copies of such records in this suit.

(8.)

The records and proceedings in the suit in the Circuit Court of Crittenden County brought on the 6th. day of August, 1892, and yet pending there styled City National Bank of Cairo, Ill., *vs.* Thos. H. Allen and others, may be used as eveidence in this suit for all the

proper purposes thereof, including the pleadings, proceedings, process, returns, orders and judgments, subject to objections for incompetency and irrelevancy without further notice and without filing copies of such record in this suit.

(9.)

The record and proceedings in the suit in the Circuit Court of Crittenden County brought on the 6th. day of August, 1892, and yet pending there, styled A. G. Mitchell as assignee of the Hill Shoe Company, a corporation of the State of Tennessee, *vs.*
91 Thos. H. Allen and others, may be used as evidence in this suit, for all the proper purposes thereof, including the pleadings, proceedings, returns, process, orders and judgments, subject to objections for incompetency and irrelevancy, without further notice, and without filing copies of such record in this suit.

It is further agreed that C. W. Edmunds, has been substituted as assignee in the place of Albert G. Mitchell as plaintiff in the said suit, and is entitled to all the rights of the said Albert G. Mitchell as plaintiff therein.

(10.)

It is further agreed that on the 1st. day of January 1897, and always since that time the parties named above as the heirs at law of Thos. H. Allen, and the plaintiffs in all the suits described above in this Agreement, and all of the parties interested in the said lands before described, except John Fritz, resided outside of the State of Arkansas, and have continued to reside outside thereof ever since, and none of them have been or are citizens of the State of Arkansas, except the said John Fritz.

It is further agreed that none of the said persons just referred to in this paragraph of this agreement were made parties to this suit, which was begun by the filing of the complaint on the 21st day of December, 1897.

It is further agreed that each of them, except the said John Fritz, would testify that they had no knowledge of the present suit against the lands described above, or its pendency, or that taxes for levee purposes had been levied by the Board of Directors of the St. Francis Levee District upon the said lands, prior to the date of the sale of the said lands in this suit, and the purchase thereof by the said C. W. Hunter, or that any law on that subject had been enacted.

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(11.)

It is further agreed that the record of this suit including the original complaint and any and all amendments thereto that may have been made, and the warning order, or order of publication and the proof of the publication thereof, any summons and other process that may have been issued in the course of the suit, and the returns of the Sheriff, or other officer, on all process, and the publication of the warning order, or notice made in the Marion Reform, a newspaper published in Crittenden County, and the

pleadings and proceedings in this suit, including all the orders, judgments and decrees on the Minute Book of the Court, and any and all reports of sales, made by the Commissioner, having reference to the lands described above, may be used and read in evidence on the hearing, by either of the parties to this controversy for all proper purposes thereof, subject only to objections for irrelevancy and incompetency, all other objections being waived. And if the original record, process, pleadings, proof, or proceedings, or other paper of record cannot be found, then a true or duly certified copy thereof may be produced and used as evidence in the place of the originals and with a like effect.

(12.)

It is further agreed that the blanks in the answer, motion, etc., of the Defendants Richard H. Allen and others, in Par. 12, thereof, Page 13-14, may be filed at or before the hearing of this cause from the judgment or decree of record, therein referred to, with the like effect, as if such blanks had been filled upon the filing of the said paper.

93

(13.)

It is further agreed that the Clerk of this Court was allowed a fee of $1.00 for making the deed to the said C. W. Hunter, conveying the lands conveyed him under the purchase made, as stated above, from the said J. T. Haden as Commissioner. Also that the Clerk was allowed for furnishing the printer with a list of the said lands to be advertised 5 cents for each tract. And, further, that the Clerk was allowed for advertising and making a report of the sale the sum of 25 cents for each tract of the said land. And that the printer for printing and publishing the notices of the suit as to, and of the sales of the said lands was allowed the sum of 50 cents for each tract of the said lands.

It is further agreed that the said sums were taxed as costs against the said lands described above, and sold to the said Hunter, and were paid out of the proceeds of the sale thereof, by J. T. Haden, the Commissioner, as Clerk, after the sales had been completed by the purchasers.

(14.)

It is further agreed that any deed made by the said J. T. Haden, as Commissioner, to the said C. W. Hunter, under the purchase and sales aforesaid, or a duly certified copy thereof, or the record of such deed in the Recorder's office, may be used and read in evidence by either of the parties for the purposes of this suit, subject to objections for irrelevancy and incompetency. And if the said deed has been confirmed or approved by the Court, the order approving or confirming the same may in like manner be used or read in evidence.

(15.)

It is further agreed that the deed dated the 17th. day of May, 1899, and of record in the office of the Recorder of Crittenden

County, Book L, Vol 2 p. 315, made by the Board of Directors of the St. Francis Levee District to C. W. Hunter, purporting to convey the N. W. ¼ of Section 10 and other lands, as therein
94 described in Township 3 North, Range 7 East, or a true and duly certified copy thereof, or the record thereof in the Recorder's office, may be used and read in evidence by either of the parties to this suit, subject to objections for irrelevancy and incompetency.

(16.)

It is further agreed that the entire record of the tax sales, including the reports or returns of the tax collector, and the record made by the clerk of the County Court of Crittenden County, showing such report, and also showing the sales of property for taxes, and the forfeiture of property for taxes, in the office of the Clerk of the County Court of Crittenden County, and all notices as to taxes for the year 1893, and all certificates attached to the said reports, or records, or returns, or notices, so far as the same concern the land described in the deed, referred to in the next preceding paragraph of this agreement, may be used and read in evidence by either of the parties to this suit, subject to objections for irrelevancy and incompetency.

(17.)

It is further agreed that the record of the suit in the Circuit Court of Crittenden County, styled the Board of Directors of the St. Francis Levee District *vs.* W. H. Echols *et als.*, brought to collect the levee taxes for the years 1893 and 1894, so far as the same has reference to the above described lands, and particularly the following of them, to wit: The N. W. ¼ of Section 10; the West ½ of Section 4; the West ½ of the Northeast ¼ of Section 4; and the west ½ of the Northwest ¼ of Section 3, and all of Section 9, in township 3 North, Range 7 East, including the original complaint and the exhibits and the other pleadings, and the writs of summons and warning order therein, and the returns thereon, and proof of the publication thereof, and the judgment pronounced, and the reports of the sales made by the Commissioner, and all the decrees and proceedings in
95 the suit, including any deed or deeds made by the Commissioner, and the confirmation or approval thereof, may be used and read in evidence by any or either of the parties for the purposes of this suit, subject to objections for irrelevancy and incompetency only, all other matters being waived.

(18.)

It is further agreed that the deed made to John Johnson as purchaser, by J. T. Haden as Commissioner, under the sale in the suit described in the last preceding paragraph of this agreement, of the lands therein described, may likewise be used and read in evidence in this suit for all the purposes thereof, subject to objections for irrelevancy and incompetency. If the said deed cannot be produced, a true copy thereof or the record thereof in the Recorder's Office may

in like manner be used and read in evidence in this suit, instead of the original and with like effect. And the record showing the redemption of the said lands from the said sale to the said John Johnson by Jno. B. Leech, appearing in the said suit, mentioned in the next preceding paragraph, may likewise be used and read in evidence in the same manner, as stated above, for the purposes of this suit.

(19.)

It is further agreed that the said C. W. Hunter is a nonresident of the State of Arkansas, and resides in the State of Tennessee, and has never resided in the State of Arkansas, and that he is not in the actual occupation of any of the lands above described. That since the sale of these lands to C. W. Hunter in — 1898, up to the time when the motion, answer or petition of Richard Allen *et al.* was filed, in September 1899, said lands advanced one hundred per cent. in market value.

(20.)

And it is further agreed that the said Richard H. Allen, and others acting with him herein, have tendered and offered to pay the said C. W. Hunter the sums necessary to redeem the lands aforesaid
96 purchased by him from his purchases at the tax sales made to him, as stated above, and that they now stand ready to make such payment, and that the said C. W. Hunter has refused to receive such tender, and denies the right of redemption claimed, and insists that the said lands belong to him as owner under his said purchases.

Done this 17th. day of September, 1900.

(Signed) RANDOLPH & RANDOLPH,
For RICHARD H. ALLEN,
JOHN FRITZ AND OTHERS.

(Signed) L. P. BERRY,
For C. W. HUNTER.

97 Endorsement and file mark. Equity Docket # 589 Board of Directors of the St. Francis Levee District, *vs.* The Memphis Land and Timber Co. *et als.* Agreed State of Facts. Controversy between the heirs at law of Thos. H. Allen, Dec'd, John Fritz, Jno. C. Latham, Jno. B. Leech, P. F. & M. Ins. Co. *et als.*, on the one side, and C. W. Hunter on the other. Filed Sept. 25th. 1900 J. T. Haden, Clerk By R. F. Ward, D. C. Randolph & Randolph.

98

Deed to Hunter.

This indenture, made this 16th. of January, 1899, by and from J. T. Haden, as Commissioner in Chancery, party of the first part hereto, and C. W. Hunter, party of the second part hereto, Witnesseth:

Whereas, at a term of the Chancery Court begun and held in and for the County of Crittenden, and the State of Arkansas, on January

17th. 1898, it was by said Court on the 14th. day of Feb. 1898, a day of said term, among other things, ordered, adjudged and decreed in a certain cause then pending therein, between the Board of Directors of the St. Francis Levee District, as complainant and the Memphis Land and Timber Co., *et al.*, were defendants that one (he being one of said defendants in said cause) pay to the Board of Directors of the St. Francis Levee District, complainant in said cause, the sum of money set opposite the names and tracts, as taxes, interest, penalty and costs, due to said Board of Directors of the St. Francis Levee District, from said defendant for the years 1895, 1896, 1897, on the following lands, lying, situate and being within the limits of the St. Francis Levee District, in said Crittenden County, to wit: E. ½ N. E. ¼ and N. W. & E. ¼, Section 3, T. 3 N. R. 7 E.; W. ½ S. W. ¼ Section 3, T. 3 N. R. 7 E.; W. ½ Sec. 4 T. 3, N. R. 7 E.; W. ½ S. E. ¼ Sec. 4 T. 3 N. R. 7 E.; all Sec. 9, T. 3 N. R. 7 E..; W. ½ and S. E. ¼ Section 32 T. 4. N. R. 7 E.; W. ½ N. E. ¼ Sec. 32 T. 4 N. R. 7 E. Total $672.95. which sum of money was adjudged by said decree to be a first lien on said described real estate as against all persons having an interest therein, and that, in default of such payment, said described land be sold by the said party of the first part (who was thereby appointed Commissioner of said Court for that purpose) at public outcry, to the highest bidder, for cash in hand, at the front door of the Court House of Crittenden County, within legal hours, June 13, 1898, after giving notice of the time, terms and place of sale, by publishing such notice in some newspaper of general circulation published in said Crittenden County, weekly, consecutively for two weeks; and if all of said lands were not sold on this said day, the sale to be continued from day to day until completed; and whereas, the said sum of money, penalty, interest and costs as aforesaid, being and remaining wholly unpaid, said party of the first part, as such Commissioner, in pursuance of the order and directions contained in said decree, gave notice of the time, place and terms of sale of said lands, by publication thereof in the Marion Reform, a weekly newspaper of General and *bona fide* circulation, published in said Crittenden County for two weekly insertions consecutively, and did proceed on said day as advertised, between nine o'clock, A. M. and three o'clock P. M. and offered said lands for sale at public outcry, to the highest bidder, at the front door of the Court House of said Crittenden County, and at such sale so made and had the said party of the second part bid and offer- for said lands the sum of $672.95, and he being the highest and last bidder, the same was then and there publicly struck off and sold to C. W. Hunter for that sum; and whereas, the said sale was duly recorded at the July 1898 term of said Court, and duly approved, and the undersigned Commissioner directed to make a deed to the purchaser.

Now therefore, This indenture witnesseth, that the said J. T. Haden, as Commissioner in Chancery aforesaid, and party of the first part to these presents, in order to carry into effect the sale made as aforesaid, in pursuance of the decree of said Chancery Court, in consideration of the premises and the sum of $672.95, hath

granted, bargained and sold, and by these presents does grant, bargain, sell and convey unto the said C. W. Hunter as party of the second part hereto, and to his heirs and assigns forever, all the rights, title, interest or claim, either in law or in equity, of the parties to said suit in Chancery, and of all other persons or claimants having an interest in or to said lands described, as aforesaid, and all and singular the rights and privileges, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

To have and to hold said lands, with all appurtenances thereto, unto the party of the second part and his heirs and assigns
99 forever.

In witness whereof, the party of the first part hereunto sets his hand and affixes his seal as such Commissioner in Chancery, on the day first above written.

J. T. HADEN,
Commissioner in Chancery.

Deed Acknowledged and Approved.

STATE OF ARKANSAS, *County of Crittenden:*

In the Crittenden Chancery Court, at the January, 1899, Term Thereof, 16th day of January, 1899.

589. In Chancery.

BOARD OF DIRECTORS OF ST. FRANCIS LEVEE DISTRICT
vs.
THE MEMPHIS LAND AND TIMBER CO. ET AL.

On this day J. T. Hayden, the Commissioner appointed to execute the decree rendered in this cause, produces to the Court here his deed to C. W. Hunter, the purchaser of part of the lands and premises mentioned and described in said decree, and upon examination of the said deed the same is, in all things approved. And thereupon the said J. T. Haden, here in open court, acknowledges that he has executed said deed to said C. W. Hunter for the lands and premises therein described, to wit:

E. ½ N. E. ¼ and N. W. N. E. ¼ Sec. 3, T. 3 N. R. 7 E. W. ½ S. W. ¼ Section 3 N. R. 7 E.; W. ½ Section 4 T. 3. N. R. 7 E.; W. ½ S. E. ¼ Section 4 T. 3 N. R. 7 E.; All section 9 T. 3 N. R. 7 E.; W. ½ and S. E. ¼ Section 32 T. 4 N. R. 7. E.; W. ½ N. E. ¼ Section 32 T. 4 N. R. 7 E., for the consideration and purposes therein mentioned and set forth; and it is ordered by the Court that a copy of this order and acknowledgement be entered upon said deed, and certified by the Clerk under the seal of this court, to the end that the same may be entitled to record.

In testimony that the above and foregoing order and acknowledgement is a true and complete copy from the record of proceeding of the Chancery Court of Crittenden County, I, J. T. Haden, do hereby

set my hand as Clerk, and affix the seal of said Court, at my office, in said County, this 16th. day of January, 1899.

J. T. HADEN, *Clerk.*

Examined and approved in open court this 16th. — Jan. 1899.
E. D. ROBERTSON, *Chancellor.*

Certificate of Record.

STATE OF ARKANSAS, *Crittenden County:*

I, J. T. Haden, Circuit Clerk and *ex-officio* Recorder of the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 16th. day of January, 1899, at 3 o'clock P. M. and the same is now duly recorded with the acknowledgements and certificates thereon in Record Book "K—2" pages 292-3-4 & 5.

In witness whereof I have hereunto set my hand and affixed the seal of this court this 25th. day of January 1899.

J. T. HADEN,
Circuit Clerk and Ex-officio Recorder.
[SEAL.] By R. F. WARD, D. C.

100 *Decree.*

Crittenden County Chancery Court Record "H."

February Term, 1902, Page 343, February 28th, 1902.

Original Complaint. # 589.

THE BOARD OF DIRECTORS OF THE ST. FRANCIS LEVEE DISTRICT
vs.
THE MEMPHIS LAND AND TIMBER CO. ET ALS.

and

A. B. BALLARD and JOSEPHINE W. BALLARD
vs.
THE BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT, C. W. HUNTER, A. HACKLER and J. P. HACKLER, Her Husband.

Complaint, Petition, Motion, and Answer.

This cause was this day heard upon the answer, motion, petition and original complaint of A. B. Ballard and Josephine W. Ballard filed herein on the 25th day of September 1899 and the agreement of counsel of the respective parties in writing, and on file and the several records and proceedings referred to in and made a part of the said agreement and the same having been argued by counsel of the respective parties and considered by the Court.

The Court orders that all the relief as prayed for in the said answer, motion, petition, and original complaint of the said A. B. Ballard and Josephine W. Ballard be and the same is hereby denied and refused and that the said answer, motion, petition, and original complaint be and the same is hereby dismissed.

To the rendering of the decree the said A. B. Ballard and Josephine by their counsel in open court at the time, excepted and now hereby leave of the Court note the exceptions.

And thereupon the said A. B. Ballard and Josephine W. Ballard prayed an appeal from the foregoing decree to the Supreme Court and the same is granted.

101 *Decree.*

Crittenden County Chancery Court Record "H."

February Term, 1902, Page 344, February 28th, 1902.

Original Complaint. # 589.

THE BOARD OF DIRECTORS OF THE ST. FRANCIS LEVEE DISTRICT
vs.
THE MEMPHIS LAND AND TIMBER CO. ET ALS.

and

JOHN FRITZ, RICHARD H. ALLEN, HARRY ALLEN, MARY L. LATHAM, and Jno. C. Latham, Her Husband; Allen H. Allen, Thos. H. Allen, Floy G. Allen, John C. Latham, in His Own Right, John B. Leech, Phœnix Fire and Marine Insurance Co., The Memphis Savings Bank, The City National Bank of Cairo and C. W. Edmonds, as Assignee of the Hill Shoe Co.,
vs.
THE BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT and C. W. HUNTER.

Complaint, Petition, Motion and Answer. # 589.

This cause was this day heard upon the answer, motion, petition, and original complaint of Richard H. Allen and others filed herein on the 25th day of September 1899 and the agreement of counsel of the respective parties in writing, and on file, and the several records and proceedings referred to in and made a part of the said agreement and the same having been argued by counsel of the respective parties and considered by the Court.

The Court finds and orders that the relief as prayed for in the said answer, petition, motion and original complaint of the said Richard H. Allen and others should be and the same is hereby granted and that the sales and purchases set out in the said answer, motion, petition, and original complaint be and the same is hereby vacated and set aside.

And in pursuance of such findings and decree the Court now further orders, adjudges, and decrees that the sales made by J. T. Haden as Commissioner as set out in his report filed herein on the
20th day of July 1898, of the west half of the southwest
102 quarter of Section 3, 80 acres; the West half of the South
east quarter of Section 4, (480 acres); the West half of Section 4 (4) 320 acres; and section 9 640 acres; all in Township 3 North Range 7 East, and the purchasers thereof by Chas. W. Hunter as shown by the said report and the deed made by the said Haden as such Commissioner to the said Hunter under the said sales and purchases and the confirmation and approval of the said sale and purchase and deed be and the same are hereby vacated set aside and cancelled and that a copy of this decree be made and certified, to be paid for by the said John Fritz, and others, to the end that the same may be put of record in the Recorder's office as a muniment of title.

But the said Hunter having paid on account of his purchase of the said lands at the said sales the sum in the aggregate of Five hundred seventy two dollars and ten cents ($572.10) as reported by the said Haden as Commissioner, it is ordered that the same be repaid and returned to him and his receipt taken therefor.

And the said John Fritz and others in whose behalf relief is hereby granted are hereby required to pay to the Clerk of this Court or to the proper officer of the Board of Directors of the St. Francis Levee District all the Levee taxes remaining unpaid and due upon the said lands, including those for which the said sales were made and all penalties thereon at six per cent. per annum from the date of payment taking proper receipts therefor, and such sums so due are hereby declared a lien upon the said tracts of land respectively to be enforced hereafter by proper decrees should the same become necessary.

Or if the said Hunter has paid the said sums that the same and interest thereon from the date of payment at six per cent. per annum
be repaid him by the said John Fritz and others and his
103 receipt taken therefor.

To the foregoing decree the said Chas. W. Hunter by his attorney, in open court, excepts and by leave of the Court here notes his exceptions.

And the said Chas. W. Hunter nows prays an appeal from the foregoing decree to the Supreme Court and the same is granted.

104 *Supersedeas Bond.*

In the Chancery Court of Crittenden County, Arkansas.

Original Complaint. No. 589.

THE BOARD OF DIRECTORS OF THE ST. FRANCIS LEVEE DISTRICT
vs.
THE MEMPHIS LAND AND TIMBER COMPANY AND OTHERS.

and

A. B. BALLARD and JOSEPHINE W. BALLARD
vs.
THE BOARD OF DIRECTORS OF THE ST. FRANCIS LEVEE DISTRICT, C. W. HUNTER, A. HACKLER, and J. P. HACKLER, Her Husband.

Complaint, Petition, Motion and Answer.

Whereas, the Appellants, A. B. Ballard and Josephine W. Ballard, have taken an appeal from the judgment or decree of the Chancery Court of Crittenden County, Arkansas, rendered at its February term, 1902, in the above styled cause, against the said A. B. Ballard and Josephine W. Ballard, in favor of the appellees, the Board of Directors of the St. Francis Levee District, C. W. Hunter, A. Hackler, and J. P. Hackler, her husband, named above, adjudging and decreeing against them the titles to the lands herein claimed and sued for by the said A. B. Ballard and Josephine W. Ballard, and also overruling and dismissing their complaint, petition, motion, and answer herein filed, and refusing and denying them any relief under the same, as more fully appears by the said decree so appealed from; and also decreeing against them the costs of the suit, and the said A. B. Ballard and Josephine W. Ballard desire to supersede the said judgment or decree:

Now, we the said A. B. Ballard, and Josephine W. Ballard, and—Fidelity and Deposit Company of Maryland—as their surety, hereby convenant with the said appellees, that the said appellant will pay to the appellees all the costs and damages that may
105 be adjudged against the said appellants on the appeal, or in the event of the failure of the appellants to prosecute the said appeal to a final judgment in the Supreme Court, or if the said appeal shall for any cause be dismissed, that the said surety shall pay to the appellees all costs and damages, and shall perform the judgment of the Court appealed from; also that the said appeal shall be prosecuted without delay; also that they, the said A. B. Ballard and Josephine W. Ballard, will satisfy and perform the judgment or decree, or order appealed from, in case it should be affirmed, and any judgment or order which the Court may render, or order to be rendered by the inferior Court, not exceeding in amount or value the original judgment or order, and all rents or damages to the prop-

erty during the pendency of the appeal, of which the appellees are kept out of possession by reason of the appeal.

Witness our hands, at Marion, Arkansas, this 25th day of March, 1902.

(Signed) JOSEPHINE W. BALLARD.
A. B. BALLARD.
FIDELITY & DEPOSIT COMPANY OF MARYLAND,
By FRANCES FENTRESS,
Member Local Board, Tenn.

Attest:

(Signed) GEO. H. GLASCOCK, *Agt.*

Approved March 28th, 1902.

(Signed) R. F. WARD,
Clerk of the Chancery Court of Crittenden County, Arkansas.

106

Supersedeas.

In the Chancery Court of Crittenden County, Arkansas.

Original Complaint.

THE BOARD OF DIRECTORS OF THE ST. FRANCIS LEVEE DISTRICT
vs.
THE MEMPHIS LAND & TIMBER CO. and Others,

and No. 589.

A. B. BALLARD and JOSEPHINE W. BALLARD
vs.
THE BOARD OF DIRECTORS OF THE ST. FRANCIS LEVEE DISTRICT, C. W. HUNTER, A. HACKLER and J. P. HACKLER, Her Husband.

Complaint, Petition, Motion and Answer.

I hereby certify that an appeal has been granted to the Supreme Court, from the judgment rendered in this Court, at the February term, 1902, in favor of the appellees, the Board of Directors of the St. Francis Levee District, C. W. Hunter, and A. Hackler and J. P. Hackler, her husband, against the appellants A. B. Ballard and J. W. Ballard, adjudging and decreeing against them, the title to the lands claimed, and herein sued for by them, and ordering and decreeing that their complaint, petition, motion, and answer be dismissed, and refusing and denying them any relief thereunder, and also adjudging against them the costs of the suit, all as appears by the decree appealed from; and that a supersedeas bond has been executed within thirty days (30) after the appeal was granted:

Therefore the appellees, and all others are commanded to stay the proceedings on the said judgment or decree.

Witness my hand and seal of said Court, at office, at Marion, Arkansas, this 28th day of March, 1902.

(Signed) R. F. WARD,
Clerk Crittenden Chancery Court.

167 *Agreement of Counsel.*

In the Chancery Court of Crittenden County, Arkansas.

Equity Docket No. 589.

THE BOARD OF DIRECTORS OF THE ST. FRANCIS LEVEE DISTRICT
vs.
THE MEMPHIS LAND AND TIMBER CO. and Others,

and

In the Matter of the Controversy Between A. B. Ballard and Josephine W. Ballard, of the One Part, and A. Hackler, Wife of J. P. Hackler, and C. W. Hunter, of the Other, Arising upon the Answer, Motion, Petition and Original Complaint of A. B. Ballard and Josephine W. Ballard, Filed in the Original Cause.

It is agreed between the counsel of the respective parties, that the correct description of the land in controversy as appears in the record should be the North East quarter of Section 31, the Southwest quarter of Section 32, the South half of the Northwest quarter of Section 32, all in Township (4) Four North, Range Seven (7), and that the description as written in the answer, Motion, Petition and Original Complaint, and in the agreed state of facts, and other portions of the record, showing that the land is in Township 3 North, instead of Township 4 North, is a mistake.

It is hereby agreed between the counsel of the respective parties, that the said mistake shall be corrected in all parts of the said record, and that the case shall be determined in the Supreme Court with reference to the land involved correctly described.

(Signed) RANDOLPH & RANDOLPH,
For BALLARDS.
L. P. BERRY AND
A. B. SHAFER,
For C. W. HUNTER.

108 *Costs Chancery Court.*

Crittenden Chancery Court.

Bill for Costs.

BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT
vs.
MEMPHIS LAND & TIMBER COMPANY.

R. F. Ward, Clerk, Clerk's Costs.....	$6.00	Due.
R. F. Ward, Transcript, ½ paid by A. B. Ballard....	34.27	
	$40.27	

That is to say Ballard pays $17.13½.

STATE OF ARKANSAS, *County of Crittenden:*

I, R. F. Ward, Clerk of the Circuit Court in and for sais County, do certify that the above and foregoing is a true and correct bill of costs in the above styled cause including the cost of Transcript in said cause.

Witness my hand and official seal as such clerk.

[L. S.]

R. F. WARD, *Clerk.*

Costs in Sup. Court.

Due appellee printing Briefs..... $15.00

Attest:

P. D. ENGLISH, *Clerk.*

109 [Endorsed:] No. 589. The Board of Directors of the St. Francis Levee District, *vs.* The Memphis Land & Timber Co. Original Complaint. And A. B. Ballard and Josephine W. Ballard *vs.* The Board of Directors of the St. Francis Levee District, C. W. Hunter, and A. Hackler and J. P. Hackler, her husband. Complaint, petition, motion, and answer. Supersedeas bond approved, and filed *an* order granting supersedeas also made and filed, this 28th day of March, 1902. (Signed) R. F. Ward, Clerk.

110 *Certificate of Clerk.*

Clerk's Certificate of Transcript.

STATE OF ARKANSAS, *County of Crittenden:*

I, Robert F. Ward, Clerk of the Circuit Court, within and for the County and State aforesaid, do hereby certify that the annexed and foregoing pages contain a true and complete transcript of the records, proceedings and papers in the case of the Board of Directors of St.

Francis Levee District *vs.* Memphis Land and Timber Co. and others and in the matter of the controversy between A. B. Ballard and others, and A. Hackler and others, and between Thos. H. Allen and others, and C. W. Hunter and others, as therein set forth, and as the same appears of record, and on file in the Clerk's office of Crittenden County, Arkansas.

Witness my hand and official seal, this 23rd day of May, 1902.

[L. S.] ROBT. F. WARD, *Clerk.*

111 [Endorsed:] Eq. D. No. 589. Board of Directors of St. Francis Levee District *vs.* Memphis Land & Timber Co. and others, and in the matter of controversy between A. B. Ballard and others and A. Hackler and others. Agreement of Counsel correcting description of land in controversy. Crittenden County, Ark. Filed 10th day of April, 1902, at 9 a. m. (Signed) R. F. Ward, Clerk.

111½ *Proceedings in Supreme Court.*

STATE OF ARKANSAS, *In the Supreme Court, set:*

Be it Remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 23rd day, being the fourth Monday of November A. D. 1903, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 2nd day of May, 1904, a day of said term:

A. B. BALLARD ET AL., Appellants,

v.

CHARLES W. HUNTER, Appellee.

Appeal From Crittenden Chancery Court.

This cause being regularly called is passed one week.

And at a subsequent term of said Court, on the 9th day of January, A. D. 1905, a day of said term, the following proceedings were had, to wit: The following causes being regularly called, on motion are passed to the days named: * * * A. B. Ballard *et al. vs.* C. W. Hunter, passed to January 23rd for oral argument.

And at the same term of said Court the following proceedings were had in said cause, to wit:

On the 23rd day of January, A. D. 1905:

The following causes being regularly called, come the parties, by their respective attorneys and solicitors, and said causes are submitted upon the briefs filed, and by the court taken under advisement: * * * A. B. Ballard *et al. vs.* C. W. Hunter: Crittenden Chancery Court: argued orally and submitted.

On the 28th day of January, A. D. 1905:

Ordered by the Court that the Clerk of this Court issue a writ of *certiorari* to correct the record in this cause.

112 And be it Further Remembered, That, at a term of the Supreme Court of the State of Arkansas, begun and held at the Court House, in the City of Little Rock, on the 28th day, being the fourth Monday of November, A. D. 1904, amongst others were the following proceedings to wit: On the 11th day of February, A. D. 1905, a day of said term:

Decree Supreme Court.

No. 5062.

A. B. BALLARD ET AL., Appellants,
vs.
CHARLES W. HUNTER, Appellee.

Appeal From Crittenden Chancery Court.

This cause came on to be heard upon the transcript of the record of the Chancery Court of Crittenden County, and was argued by solicitors, on consideration whereof it is the opinion of the Court that there is no error in the proceedings and decree of said Chancery Court in this cause.

It is therefore ordered and decreed by the Court that the decree of said Chancery Court in this cause rendered, be and the same is hereby in all things affirmed with costs.

It is further ordered and decreed that said appellees recover of said appellants and the Fidelity and Deposit Company of Maryland, surety in the supersedeas bond, all their costs in this court in this cause expended and have execution thereof.

113 STATE OF ARKANSAS, *In the Supreme Court, set:*

Be it Remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 28th day, being the fourth Monday of November A. D., 1904, at the Court House, in the City of Little Rock, the following opinion was delivered by the Court in the case of

A. B. BALLARD ET AL., Appellants,
vs.
CHARLES W. HUNTER ET AL., Appellees.

Appeal From Crittenden Chancery Court.

Opinion.

114 No. 164.

In the Supreme Court of Arkansas, Feb'y 11, 1905.

BALLARD
v.
HUNTER.

Opinion.

BATTLE *J.:*

"This is an attack upon a sale of lands made by a commissioner in chancery pursuant to a decree foreclosing the lien of the Board of Directors of St. Francis Levee District for levee taxes, appellees having purchased the lands in controversy at said sale.

The decree condemning the lands and ordering the sale was rendered on Feb. 14, 1898, a day of the January term 1898 of the court: the sale was confirmed by the court during the July term 1898, and appellants appeared September 1899 and filed their complaint attacking the validity of the sale. They allege that the lands were owned by appellant Josephine Ballard, who was not a party to the foreclosure proceedings, and who was a non-resident of the state and had no information of the pendency of the suit; that no affidavit for warning order was made and that the warning order was not endorsed on the complaint.

Appellees entered their appearance, and from a decree dismissing the complaint for want of equity, the Ballards appealed. Appellants in their said complaint asked that it be considered by the court either as a motion for rehearing under the statute, or as an appearance by non-residents to vacate a judgment and have a new trial under section 6259 Kirby's Digest, or as an original complaint to quiet title, or as a bill of review and that relief be granted by cancelling the sale as a cloud upon their title.

The act of the General Assembly of 1895 p. 88 as amendatory of sec. 11 of the Act of 1893 creating said levee district provides that the payment of taxes assessed against the lands in the district shall be enforced by suit in the name of the Board of Directors of the levee district in the chancery courts of the several counties composing the district and that "said suit shall be conducted in accordance with the practice and proceedings of chancery courts in this State
115 except as herein otherwise provided, and except that neither attorneys nor guardians *ad litem*, nor any of the provisions of section 5877 Sand. & Hill's Dig. (Kirby's Dig. sec. 6254) of the statutes of Arkansas shall be required, and except that said suits may

be disposed of on oral testimony as in ordinary suits at law; and the law shall be liberally construed to give said assessment lists the effect of *bona fide* mortgages, for a valuable consideration, and a first lien on said lands as against all persons having an interest therein."

Said act further reads, in part as follows: 'Said proceedings and judgment shall be in the nature of proceedings *in rem*, and it shall be immaterial that the ownership of said lands may be incorrectly alleged in said proceedings; and said judgment may *ne* enforced wholly against said lands and not against any other property or estate of said defendant. All or any part of said delinquent lands for each of said counties may be included in one suit for each county, instituted for the collection of said delinquent taxes etc. as aforesaid, and all delinquent owners of said lands, including those unknown as aforesaid, may be included in said one suit as defendants; and notice of the pendency of such suit shall be given as against non-residents of the county, and the unknown owners respectively, where such suits may be pending, by publication weekly for four weeks prior to the day of the term of court on which final judgment may be entered for the said sale of said land.'

The form of the notice required is set forth *in extenso* in the statute, giving the nature of the suit and the description of the lands, concluding as follows: "Said persons and corporations, and all others interested in said lands, are hereby notified that they are required by law to appear and make defense to said suit, or the same will be taken for confessed and judgment final will be entered directing the sale of said lands for the purpose of collecting said delinquent levee tax etc.

The act further provides that 'at any time within three years after the rendition of the final decree of the chancery court herein provided for, the owner of the lands may file his petition in the court rendering the decree, alleging the payment of the taxes on said lands for the year for which they were sold, and upon the establishment of that fact the court shall vacate and set aside said decree.'

116 Appellants urge that the decree and sale thereunder were void for the reasons (1) that the short notice provided by the statute and the omission to take the lands in actual custody of law are insufficient to put the land owners upon notice and render the proceedings void as in violation of sec. 25 Art. V of the Constitution — of the Fourteenth Amendment of the Constitution of the United States: (2) That the lands in controversy were the property of appellant Josephine Ballard who was not named as a party defendant to the foreclosure suit: (3) that no affidavit was filed in said suit authorizing the issuance of publication of a warning order or notice: (4) that the warning order or notice was not endorsed upon the complaint: (5) and that said lands were sold for illegal penalties and costs adjudged against them."

First. The act provides that notice of the pendency of an action for the enforcement of the collection of levee taxes, penalty and costs against lands shall be given to non-resident owners by publication thereof in some newspaper published in the county where the suit is pending for four weeks prior to the day of the term of the court on which final judgment may be entered for the sale of their

lands. Such notice in similar cases has uniformly been held reasonable. The law, of which they (owners) are bound to take notice, advises them that their lands in the levee district are subject to taxation for levee purposes, and of the times and places when and where they will be assessed and taxes levied thereon; when these taxes shall be paid, and if not paid suits will be instituted in certain courts to enforce the collection thereof by sale; and that notice of the pendency of the suit would be given them by publication in a newspaper published in the county wherein their lands lie. The law warns them (non-resident owners) of the necessity of being vigilant and gives them the information by which they can protect their property against sales; and provides that they, at any time within three years after the rendition of a final decree condemning their lands to be sold to pay the levee taxes, may have the decree and sale set aside by showing that they have paid the taxes, for which their lands were ordered sold, before the rendition of the decree. We, therefore, conclude that the notice is reasonable. Johnson *v.* Hunter, 127 Fed. Rep. 219, and cases cited.

117 2. The fact that the lands in controversy were the property of Mrs. Josephine Ballard and she was not made a party defendant to the suit instituted to enforce the collection of the taxes thereon does not affect the decree therein and the sale thereunder. The act provides that such suit and decree shall be in the nature of proceedings *in rem*, and that "it shall be immaterial that the ownership of the lands may be incorrectly alleged in said proceedings." Acts of 1895, p. 89.

3. The act provides that notice by publication shall be given to the defendants in suits instituted for the collections of levee taxes, who are non-residents of the county, where the suits are brought. The plaintiff in the complaint in the proceedings attacked in this suit stated who of the defendants therein were non-residents of the county in which the proceedings were pending; and such complaint was sworn to. This was sufficient to authorize notice by publication without a separate affidavit to the same effect. It was held in Sannoner *v.* Jacobson, 47 Ark. 31, that an affidavit and complaint may be included in one instrument of writing, if it contains all the essentials of both. The complaint in the proceedings attacked contained the essentials of the affidavit and is sufficient to answer the same purpose. Johnson *v.* Hunter, *supra*.

The act under which the aforesaid proceedings were instituted does not require a warning order to be entered on record or the complaint; and if it had the proceedings could not be attacked collaterally, unless such entry was made jurisdictional as it was in Gregory *v.* Bartlett, 55 Ark. 30; and it was not in this case. Clay *v.* Bilby, 78 S. W. Rep. 749.

5. A decree of a court of competent jurisdiction is not subject to a collateral attack because lands were sold thereunder for illegal penalties and costs. Harry E. Kelley *v.* Laconia Levee District, MSS. Opinions; Johnson *v.* Hunter, *supra*.

Decree affirmed.

118 And be it further remembered that, at the same term of court, on the 25th day of February, A. D. 1905, a day thereof, amongst others, the following proceedings were had, to wit:

Motion.

No. 5062.

A. B. BALLARD ET AL., Appellant,
vs.
CHARLES W. HUNTER, Appellee.

Comes appellants by solicitors and file their motion for an order in this cause showing that said appellants claimed and argued that the legislation of Arkansas, and the acts done under such legislation were in violation of Section 2, Article 4, Constitution of the United States, and of the 14th Amendment and that such questions were considered and decided adversely to appellants.

119 And be it Further Remembered, That at the same term of court, on the 4th day of March, A. D. 1905, a day thereof, amongst others, the following proceedings were had, to wit:

Order.

No. 5062.

A. B. BALLARD ET AL., Appellant,
vs.
CHARLES W. HUNTER ET AL., Appellees.

Appeal from Crittenden Chancery Court.

Ordered by the Court that the following order be made part of the decree of this court in this cause, and said decree is by the Court modified accordingly and this order incorporated as a part of said decree, viz.:

"On the hearing of this cause the appellants, A. B. Ballard *et al.* claimed and argued that the legislation of Arkansas, stated in the pleadings and attacked herein, and the acts done under said legislation, in the suit for levee taxes described in the pleadings, were in violation of Section 2, Article 4, of the Constitution of the United States and other portions thereof, and of the 14th Amendment to that Constitution, and that such questions were considered by the Court in its decision and decided adversely to the said A. B. Ballard and others, the appellants."

And that this order take effect as of the date of said decree, viz: February 11th, A. D. 1905.

120 STATE OF ARKANSAS, *In the Supreme Court:*

I, Peyton D. English clerk of the Supreme Court of Arkansas do hereby certify that the foregoing 122 pages contain a true perfect and compared transcript of the record and all proceedings had in said Supreme Court and the Chancery Court of Crittenden County, as the same appears of record and on file in this Court in the cause therein stated.

In testimony whereof I hereto set my hand and affix the seal of said Court at my office in the City of Little Rock, the capital of said State this 9th day of September A. D. 1905.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH, *Clerk.*

Clerk's fees paid by Randolph & Randolph, Att'ys, $45.00.

[Seal of the Supreme Court of Arkansas.]

Attest:

PEYTON D. ENGLISH, *Clerk.*

[Endorsed:] No. —. A. B. Ballard *et al. v.* C. W. Hunter. Transcript to U. S. Sup. Court, on Writ of Error.

Endorsed on cover: File No. 19,917. Arkansas supreme court. Term No. 123. A. B. Ballard and Josephine W. Ballard, plaintiffs in error, *vs.* Charles W. Hunter, A. Hackler, and The Board of Directors of the St. Francis Levee District. Filed October 3rd, 1905. File No. 19,917.